Reynolds, Craig

From: Bostwick, Edith
Sent: April 13, 2016 11:57 AM
To: Piché, Renée; McGunigal, Sharon; Robinson, Perry; Kropp, Douglas; House, Matthew
Subject:
Attachments:

Colleagues,

Edith

From: Clark, Caroline
Sent: 2016-Apr-13 11:22 AM
To: Bostwick, Edith; Franey, Mary; Becker, Bruce; McIntosh, Margaret
Cc: Hickey, Wendy
Subject:

FYI

Caroline Clark
613-907-3630

From: Hudson, Michael
Sent: Wednesday, April 13, 2016 10:52 AM
To: Provencher, Danielle; Leech, David; Leboeuf, Yves; Dickson, Samantha Maislin (NRCAN); Sharzer, Stephen (DFO); Schultz, Henry (TC); Shipton-Mitchell, Cindy (FIN); Gobeil, Richard; Wong, Robert (FIN); Curtis-Micallef, Shalene (HC); McCombs, Mark (HRSDC); Kwan, Diana; Lafontaine, Alain (AANDC-AADNC); Lovell, John; Sargent, Laurie; McGrath, Marian (DND); Young, Loree; McGrath, Carla; Nadeau, François (TBS); 'stuart.herbert@hrsdc-rhdcc.gc.ca'; Gobeil, Richard; Hanssens, Bernard (HWC); Troniak, Shauna; Clark, Caroline
Cc: Kwan, Diana
Subject:

s.23

Hi, everyone.

[redacted]

From: Hudson, Michael
Sent: April-07-16 5:49 PM
To: Provencher, Danielle; Leech, David; Leboeuf, Yves; Dickson, Samantha Maislin (NRCAN); Sharzer, Stephen (DFO); Schultz, Henry (TC); Shipton-Mitchell, Cindy (FIN); Gobeil, Richard; Wong, Robert (FIN); Curtis-Micallef, Shalene (HC); McCombs, Mark (HRSDC); Kwan, Diana; Lafontaine, Alain (AANDC-AADNC); Lovell, John; Sargent, Laurie; McGrath, Marian (DND); Young, Loree; McGrath, Carla; Nadeau, François (TBS); 'stuart.herbert@hrsdc-rhdcc.gc.ca'; Gobeil, Richard; Hanssens, Bernard (HWC); Troniak, Shauna; Clark, Caroline **s.23**
Cc: Kwan, Diana
Subject: [redacted]

[redacted]

Michael Hudson, Lead / Chef
Task Force on Constitutional Relations with Indigenous Nations / Groupe de travail sur les relations constitutionnelles avec les nations autochtones
Aboriginal Affairs Portfolio / Portefeuille des Affaires autochtones
1138 rue Melville Street, Suite 900 Vancouver, BC
T: 604-775-5173 F: 604-775-5152 mhudson@justice.gc.ca

You can communicate with me in the official language of your choice. / Vous pouvez communiquer avec moi dans la langue officielle de votre choix

Pages 3 to / à 22

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23

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Document Date / Date du document: 2016-04-15
Date of Receipt / Reçu le: 2016-04-15

MCU # / # UCM: 2016-008633

Author / Auteur: [redacted]
Toronto ON [redacted]
s.19(1)

Doc Type / Type de Doc: R

Subject / Sujet: 271001
Indigenous and Northern Affairs Canada - General

Due Date / Date d'échéance: 2016-06-03

Sector's Due Date / Date d'échéance du secteur:

Assigned To / Assigné à: MCUED5

Assigned Date / Assigné le: 2016-04-21

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[ ] Modified standard reply / lettre type modifiée

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signed on / signée le_____

Comments / Remarques:

PF

Recommend PA overtaken already addressed to Bennet
June/10/2016 dcb June 13 2016

INSTRUCTIONS

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I: [ ] For your information (no action required) / À titre d'information (aucune mesure requise)

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File Away / Classé: PA - overtaken June 16/16 PJ

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Date of Receipt / Reçu le: 2016-04-15

MCU # / # UCM: 2016-008633

Author / Auteur:

[redacted]

s.19(1)

Toronto ON [redacted]

[redacted]

Doc Type / Type de Doc: R

Subject / Sujet: 271001
Indigenous and Northern Affairs Canada - General

Due Date / Date d'échéance: 2016-06-03

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Assigned To / Assigné à: MCUED5

Assigned Date / Assigné le: 2016-04-21

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File Away / Classé:

A16-00833
MCUEO5

Ministerial Correspondence Unit - Justice Canada

271001

From: Wilson-Raybould, Jody - M.P. <Jody.Wilson-Raybould@parl.gc.ca>
Sent: April-15-16 3:30 PM
To: Ministerial Correspondence Unit - Justice Canada
Subject: FW: Indigenous human rights lawyer concerned that Occupy INAC/Attawapiskat Solidarity peaceful activists' basic human rights are being denied

---

From: [redacted]
Sent: April 15, 2016 3:26 PM
To: Bennett, Carolyn - M.P.; Wilson-Raybould, Jody - M.P.
Cc: [redacted]
Subject: Indigenous human rights lawyer concerned that Occupy INAC/Attawapiskat Solidarity peaceful activists' basic human rights are being denied

Warm greetings Honourable Carolyn Bennett and Honourable Jody Wilson-Raybould,

I hope this finds you in good health and in good spirits.

I'm writing to express concern over the treatment of peaceful Indigenous and non-Indigenous activists at the Toronto Occupy INAC/Attawapiskat Solidarity over the past 48 hours. I understand from speaking with another lawyer and from Indigenous women inside that Toronto Police is carrying out orders - it is unclear where these orders are coming from - to deny the activists the use of toilets located on a nearby floor. There are no washrooms on the IANA floor.

Toronto Police state that activists are welcome to use the washrooms on a nearby floor but can not return to the IANA floor. I am shocked and dismayed to hear that the activists are currently using buckets and toilet paper provided by Toronto Police. Toronto Police then escorts to/from the washrooms an activist who volunteers to dump out the buckets.

Please restore the human dignity of these peaceful sisters and brothers by permitting them to use the toilets.

Like the Occupy INAC/Attawapiskat Solidarity peaceful activists, I also ask you to please ensure that the demands of the sacred youth and children of Attawapiskat are met.

Thank you.

All My Relations,

[redacted]

s.19(1)

Toronto, ON

[redacted]

To: Fares, Patricia[Patricia.Fares@justice.gc.ca]
Subject: RE: 16-008633 incoming(1).pdf
Sent: Wed 6/8/2016 5:15:28 PM
From: Monette, Suzanne

Hello Patricia,

This incoming has been reviewed by Steve Accett and he indicated that it should be responded to by INAC.

Thank you,

Suzanne Monette
Adjointe à la correspondance et à l'agenda

Bureau de la Sous-ministre adjointe
Ministère de la Justice -Portefeuille des affaires Autochtones

Scheduling and Correspondence Assistant
Assistant Deputy Minister's Office
Department of Justice - Aboriginal Affairs Portfolio
275 rue Sparks Street, Room/pièce 7075
Ottawa, Ontario K1A 0H8
613-907-3648
suzanne.monette@justice.gc.ca

From: Fares, Patricia
Sent: 2016-Jun-06 8:54 AM
To: Monette, Suzanne <Suzanne.Monette@justice.gc.ca>; Facette, Pierrette <Pierrette.Facette@justice.gc.ca>
Subject: (to Steve) 16-008633 incoming(1).pdf

Good morning. What would be the appropriate approach regarding this correspondence? Thank you

Patricia Fares

Writer | Rédactrice

Ministerial Correspondence Unit | Unité de la correspondance ministérielle

Justice Canada

Government of Canada | Gouvernement du Canada

Ottawa, Canada K1A 0H8

patricia.fares@justice.gc.ca

Tel. / Tél. 613-948-3013

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Routing Slip / Feuille de contrôle

Document Date / Date du document: 2016-04-16
Date of Receipt / Reçu le: 2016-04-18

MCU # / # UCM: 2016-011377

Author / Auteur: [redacted]

s.19(1)

Victoria BC

[redacted]

Doc Type / Type de Doc: R

Subject / Sujet: 271001
Indigenous and Northern Affairs Canada - General

Due Date / Date d'échéance: 2016-06-30

Sector's Due Date / Date d'échéance du secteur:

Assigned To / Assigné à: MCUED2

Assigned Date / Assigné le: 2016-05-18

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File Away / Classé:

MCUED2 - 271001

cc

Ministerial Correspondence Unit - Justice Canada

From: Wilson-Raybould, Jody - M.P. <Jody.Wilson-Raybould@parl.gc.ca>
Sent: April-18-16 9:53 AM
To: Ministerial Correspondence Unit - Justice Canada
Subject: FW: Attawapiskat - the BC Solution - Rediscovery

From: [redacted]
Sent: April 16, 2016 10:50 AM
To: Wilson-Raybould, Jody - M.P.
Subject: Attawapiskat - the BC Solution - Rediscovery

s.19(1)

Dear Honourable Minister - Jody:
I know the situation in Attawapiskat is complex and there is no quick-fix, but please consider contacting Thom Henley, Founder of the Rediscovery program and talk with him about the possibilities of a Rediscovery program as one of the solutions. Thom can be reached at: [redacted]
I am attaching a few words from Thom's unpublished autobiography to give you a snapshot view of the mission statement and principles of Rediscovery. I believe Rediscovery was one of the key elements in strengthening the Haida youth who I initially saw as a consequence of their interaction with the legal system [redacted]

Rediscovering

...Surely there's a better way to connect kids back to the land, I thought, than having them spend endless hours in excavation pits digging up the clam shells and salmon bones discarded by their ancestors. Anthropology and archeology were my fields of study at Michigan State University, but I came to realize what a serious white-man obsession excavating ancient human habitation sites tended to be. What if these same Haida kids could bring back a piece of their past, I started thinking, so they knew more fully where they came from and where they're going?

...What if there was a new type of outdoor adventure camp that focused on indigenous peoples' relationships with the land, I wondered? What if kids were taught to see the outdoors not as a savage wilderness but as a homeland that nourishes their bodies and souls; a landscape they had responsibility to steward? What if we could stop our obsession with conquering nature long enough for children to rediscover it – be embraced by it?

...the mission statement: "Drawing from the strengths of indigenous cultures and with a love and reverence for the land. Rediscovery aims to help youth of all ages and all cultures discover the world within themselves, the cultural worlds between them and the natural world around them." It was a simplistic, yet all-encompassing mission statement that has guided Rediscovery camps worldwide for nearly 40 years.

One of the greatest strengths of the Rediscovery program, that set it apart from so many others was the fundamental role Haida Elders played.

...The elders became Rediscovery's guiding hand ensuring that protocols were properly conducted, stories correctly told, traditional skills re-acquired and that Haida youth were instilled with the cultural pride and respect for all living beings their ancestors had. ...the Haida Elders provided such a safe and supportive place for participants to confide their feelings, be counseled, and encouraged in their lives that many kids sought them out in their communities after the summer camp program ended. In so doing, the program re-established an important cross-generational bond that had been deliberately broken down in many First Nations communities through the residential school system. Rediscovery radically refuted more than a century of forced assimilation."

Thank you for your consideration. [redacted]

s.19(1)

To: [redacted]
Sent: Fri 6/17/2016 7:18:17 PM
From: Ministerial Correspondence Unit - Mailout
Flag Status: 0x00000000
Subject: Correspondence on behalf of the Minister of Justice and Attorney General of Canada

Dear [redacted] s.19(1)

On behalf of the Honourable Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada, I acknowledge receipt of your correspondence concerning the Rediscovery program.

Your correspondence may of interest to the Honourable Carolyn Bennett, Minister of Indigenous and Northern Affairs. I have therefore taken the liberty of forwarding a copy of your correspondence to Minister Bennett for her information and consideration.

Thank you for writing.

Yours sincerely,

A/Manager

Ministerial Correspondence Unit

c.c.: The Honourable Carolyn Bennett, P.C., M.P.

Minister of Indigenous and Northern Affairs

To: INDIGENOUS AND NORTHERN AFFAIRS / AFFAIRES AUTOCHTONES ET DU NORD (Minister@aadnc-aandc.gc.ca)[Minister@aadnc-aandc.gc.ca]
From: Ministerial Correspondence Unit - Mailout
Flag Status: 0x00000000
Subject: Correspondence on behalf of the Minister of Justice and Attorney General of Canada

16-011377 incoming(1).pdf
16-011377 outgoing email(1).msg

The attached correspondence addressed to the Minister of Justice and Attorney General of Canada is forwarded to your office for action or information as appropriate.

La correspondance ci-jointe adressée au ministre de la Justice et procureur général du Canada vous est transmise pour suite à donner ou pour information.

To: Ministerial Correspondence Unit - Mailout[Ministerial.CorrespondenceUnit-Mailout@justice.gc.ca]
Sent: Fri 6/17/2016 7:20:16 PM
From: AADNC-AANDC Ministre-Minister
Flag Status: 0x00000000
Subject: Re: Correspondence on behalf of the Minister of Justice and Attorney General of Canada

La présente accuse réception de votre courriel adressé à l'honorable Carolyn Bennett, ministre des Affaires autochtones et du Nord. Je peux vous assurer qu'il recevra toute l'attention voulue.

This message is to acknowledge receipt of your email to the Honourable Carolyn Bennett, Minister of Indigenous and Northern Affairs. Please be assured that it will be given every consideration.

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Document Date / Date du document: 2016-04-19
Date of Receipt / Reçu le: 2016-04-20

MCU # / # UCM: 2016-008955

Author / Auteur: [redacted]
Vancouver BC [redacted]

s.19(1)

Doc Type / Type de Doc: R

Subject / Sujet: 140013
Criminal Code - Euthanasia/Assisted Suicide

Due Date / Date d'échéance: 2016-06-08

Sector's Due Date / Date d'échéance du secteur:

Assigned To / Assigné à: MCUED1

Assigned Date / Assigné le: 2016-04-26

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A16-00895
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Ministerial Correspondence Unit - Justice Canada

140013

From: Wilson-Raybould, Jody - Riding 1 <Jody.Wilson-Raybould.C1@parl.gc.ca>
Sent: April-20-16 12:10 PM
To: Ministerial Correspondence Unit - Justice Canada
Cc: Wilson-Raybould, Jody - Riding 1A
Subject: FW: comment

Hello MCU,

Please find below an email sent to the constituency office that is addressed to the Minister in relation to MAID from [redacted]

Regards,

[redacted]
Constituency Office of the Honourable Jody Wilson-Raybould,
Member of Parliament for Vancouver Granville

104 - 1245 West Broadway
Vancouver, British Columbia
V6H 1G7
604-717-1141
jody.wilson-raybould.c1@parl.gc.ca

s.19(1)

From: [redacted]
Sent: April-19-16 9:23 PM
To: Wilson-Raybould, Jody - Riding 1
Subject: comment

Dear Minister Wilson-Raybould,

The eyes and hearts of people around the world are focused on Attawapiskat and its recent rash of suicides. People are grieving because of these tragedies. We ask what can we do to prevent these suicides? Federal agents have been trying to assist this native community. At the same time the Canadian Federal Government is moving towards legislation that would permit and make legal the assisting of some to commit suicide. On the one hand we are trying to prevent suicide, and on the other hand efforts are being made to permit and legalize suicide – a real contradiction on the part of the Federal Government. The native people who are highly vulnerable towards suicide are being victimized again by the Federal Government.

Peace,

Page 36

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Document Date / Date du document: 2016-04-20
Date of Receipt / Reçu le: 2016-04-20

MCU # / # UCM: 2016-012798

Author / Auteur: [redacted] s.19(1)

Kingsville ON [redacted]

Doc Type / Type de Doc: R

Subject / Sujet: 140013
Criminal Code - Euthanasia/Assisted Suicide

Due Date / Date d'échéance: 2016-07-15

Sector's Due Date / Date d'échéance du secteur:

Assigned To / Assigné à: MCUED2

Assigned Date / Assigné le: 2016-06-03

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140013 003

Ministerial Correspondence Unit - Justice Canada

From: Wilson-Raybould, Jody - M.P. <Jody.Wilson-Raybould@parl.gc.ca>
Sent: April-20-16 9:46 AM
To: Ministerial Correspondence Unit - Justice Canada
Subject: FW: Medical Aid in Dying

From: [redacted] s.19(1)
Sent: April 20, 2016 2:35 AM
To: Wilson-Raybould, Jody - M.P.
Subject: Medical Aid in Dying

Honourable Jody Wilson-Raybould
Office of the Prime Minister
Ottawa, ON

Dear Mrs. Wilson-Raybould,

This past week I was listening to the news while driving in the car. The first story spoke of the tragedy of the Attawapiskat First Nation suicide epidemic. Immediately following this story was a report talking about the current legislative discussions which are ongoing about Doctor Assisted Death and Bill C-14. The irony of these two stories being reported on one after the other struck me immediately.

On one hand we're talking about the terrible fact that teenagers in this First Nations community feel like life isn't worth living and are trying to take their lives and how this shouldn't be happening. Then right after that we're talking about how terminally ill, elderly people and people with mental wellness issues should have the "right" to have a doctor assist them in taking their lives.

A quick Google search of "Suicide Epidemic" will show you that the Attawapiskat tragedy is not an isolated situation. This is a problem across Canada in many First Nation communities, clearly indicating that we are not providing the care and resources that these communities need and deserve.

Why then, is it not obvious that the fact that we're discussing Doctor Assisted Suicide is an indication that we are not doing our best and providing the necessary resources when it comes to palliative care, mental wellness treatment and care for the elderly. I can't for the life of me understand why on one hand the news is telling us that teenagers with clear mental health issues from various First Nations communities wanting to kill themselves is a tragedy (and it most definitely is), and on the other hand we're being told that individuals across Canada with serious mental health issues or those with untreatable illnesses should be able to take kill themselves (with a health care providers help) but that is just being compassionate.

It seems to me we should be more focussed on helping people by giving them better and more complete care and support rather than trying to make it acceptable to end their lives prematurely.

[redacted]

With all of this in mind I understand that you and your government plans to introduce a law regarding Medical Aid in Dying (MAID). As your government continues to inform itself about how to frame the law, you will undoubtedly consider the report of the Special Joint Committee on Physician Assisted Dying. I'm sure that you are aware that the scope of those recommendations shocked many Canadians.

In light of all of this I am urging you to write a law that is as restrictive as possible. The very idea of helping people commit suicide is offensive to me and clearly at odds with provincial and territorial initiatives to prevent suicide. To many Canadians, the recent events bring a deep sense of sadness.

Please, I respectfully urge you, respect and include the perspective of millions of Canadians who see any legalization of euthanasia and assisted suicide as unconscionable and ultimately harmful, not only to our own beliefs, but to the very well-being of our country.

In particular I urge you to consider these recommendations:

1. Please do not require physicians, who by conscience are opposed to euthanasia, to refer patients to a doctor who would perform the 'procedure'. Patients would be free to seek a doctor willing to assist their suicide on their own.
2. Please make the process inclusive, by listening to the informed and highly educated opinions of those like ethicist Margaret Somerville who despite their belief that the notion of MAID is by nature wrong, have provided advice on how to minimize the harm. There is no shortage of noteworthy academic and social commentary experts who find grave fault with MAID and can offer constructive advice. Please allow yourself to hear these voices.
3. Please exclude anyone not of adult age.
4. Please have robust safeguards in place for those who suffer from any mental illness.
5. Please have robust checks and balances in place for those who will approve, carry out and report MAID requests.
6. Please include a before-the-fact reporting requirement intended to prevent instances of finding out too late that there was a problem with the request for or administration of the MAID.
7. Please have processes in place which prevent impulsive or rash decisions for those expressing a wish for MAID.
8. Please consider including some form of family member consultation when a loved one is requesting MAID. Imagine finding out after the fact that your father, mother, son or daughter had been assisted in ending their life by suicide and thinking that you might have been able to offer another path. Loss of a loved one is a deeply personal family matter.
9. Please consider writing an interim law which provides MAID only in the most extreme cases and use the notwithstanding clause to defend against anticipated resulting legal challenges in the short-term future, to allow time for more reflection and voices.
10. Please examine the potential intersection of elder abuse and MAID, particularly cases of economic pressure to request MAID. Many experts have suggested that those who suffer greatly will see themselves as a burden on our health care system and families, and feel pressure to request MAID.
11. Please establish a committee to explore ways to support the capacity of families and society to care for the elderly and those who suffer any physical or emotional anguish. The question, "why have we gotten here - to a place where ending life is seen as the solution to suffering?" would be worth exploring.

Above all, please do not dismiss the millions of Canadians who see MAID as inherently wrong and damaging to the long-term health of our society. The issues around it have not been systematically aired and clarified, and Canadians are on the verge of having to deal with decisions about their loved ones that cannot be unmade. Many aspire to a way of caring for our elderly and suffering in a meaningful rather than expedient manner. I urge you to choose a cautious and careful path on a matter that so profoundly affects Canadians and their families.

Thank you for considering my requests.

Sincerely,

[redacted]

Kingsville, ON

[redacted]

s.19(1)

To: [redacted]
Cc: Ministerial Correspondence Unit - Justice Canada[mcu@justice.gc.ca]; Jane Philpott, P.C.,M.P.[Minister_ministre@hc-sc.gc.ca]
From: Prime Minister/Premier Ministre
Flag Status: 0x00000000
Subject: Office of the Prime Minister / Cabinet du Premier ministre

Dear [redacted]

On behalf of the Right Honourable Justin Trudeau, I would like to acknowledge receipt of your correspondence regarding physician-assisted dying.

Please be assured that your comments have been carefully reviewed. As the issue you have raised will be of particular interest to the Honourable Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada, and the Honourable Jane Philpott, Minister of Health, I have taken the liberty of forwarding your e-mail to them. I am certain that the Ministers will wish to give your concerns every consideration.

Thank you for writing to the Prime Minister.

S. Russell
Executive Correspondence Officer
A[redacted]t de correspondance
de la haute direction

>>> From : [redacted] Received : 20 Apr 2016 02:31:59 AM >>>

>>> Subject : Medical Aid in Dying >>>>

Right Honourable Justin Trudeau
Prime Minister of Canada
Office of the Prime Minister
80 Wellington Street
Ottawa, ON
K1A 0A2

s.19(1)

Dear Mr. Trudeau:
This past week I was listening to the news while driving in the car. T[redacted] first story spoke of the tragedy of the Attawapiskat First Nation suicide epidemic. Immediately following this story was a report talking about the current legislative discussions which are ongoing about Doctor Assisted Death and Bill C-14. The irony of these two stories being reported on one after the other struck me immediately.

On one hand we're talking about the terrible fact that teenagers in this

First Nations community feel like life isn't worth living and are trying to take their lives and how this shouldn't be happening. Then right after that we're talking about how terminally ill, elderly people and people with mental wellness issues should have the 'right' to have a doctor assist them in taking their lives.

A quick Google search of 'Suicide Epidemic' will show you that the Attawapiskat tragedy is not an isolated situation. This is a problem across Canada in many First Nation communities, clearly indicating that we

are not providing the care and resources that these communities need and deserve.

Why then, is it not obvious that the fact that we're discussing Doctor Assisted Suicide is an indication that we are not doing our best and providing the necessary resources when it comes to palliative care, mental wellness treatment and care for the elderly. I can't for the life of me understand why on one hand the news is telling us that teenagers with clear mental health issues from various First Nations communities wanting to kill themselves is a tragedy (and it most definitely is), and on the other hand we're being told that individuals across Canada with serious mental health issues or those with untreatable illnesses should be able to take kill themselves (with a health care providers help) but that is just being compassionate.

It seems to me we should be more focussed on helping people by giving them better and more complete care and support rather than trying to make it acceptable to end their lives prematurely.
With all of this in mind I understand that you and your government plans to introduce a law regarding Medical Aid in Dying (MAID). As your government continues to inform itself about how to frame the law, you will undoubtedly consider the report of the Special Joint Committee on Physician Assisted Dying. I'm sure that you are aware that the scope of those recommendations shocked many Canadians.

In light of all of this I am urging you to write a law that is as restrictive as possible. The very idea of helping people commit suicide is offensive to me and clearly at odds with provincial and territorial initiatives to prevent suicide. To many Canadians, the recent events bring a deep sense of sadness.

Please, I respectfully urge you, respect and include the perspective of millions of Canadians who see any legalization of euthanasia and assisted suicide as unconscionable and ultimately harmful, not only to our own beliefs, but to the very well-being of our country.

In particular I urge you to consider these recommendations:

1. Please do not require physicians, who by conscience are opposed to euthanasia, to refer patients to a doctor who would perform the 'procedure'. Patients would be free to seek a doctor willing to assist their suicide on their own.
2. Please make the process inclusive, by listening to the informed and highly educated opinions of those like ethicist Margaret Somerville who despite their belief that the notion of MAID is by nature wrong, have

provided advice on how to minimize the harm. There is no shortage of noteworthy academic and social commentary experts who find grave fault with MAID and can offer constructive advice. Please allow yourself to hear these voices.

3. Please exclude anyone not of adult age.

4. Please have robust safeguards in place for those who suffer from any mental illness.

5. Please have robust checks and balances in place for those who will approve, carry out and report MAID requests.

6. Please include a before-the-fact reporting requirement intended to prevent instances of finding out too late that there was a problem with the request for or administration of the MAID.

7. Please have processes in place which prevent impulsive or rash decisions for those expressing a wish for MAID.

8. Please consider including some form of family member consultation when a loved one is requesting MAID. Imagine finding out after the fact [redacted]t your father, mother, son or daughter had been assisted in ending their life by suicide and thinking that you might have been able to offer another path. Loss of a loved one is a deeply personal family matter.

9. Please consider writing an interim law which provides MAID only in the most extreme cases and use the notwithstanding clause to defend against anticipated resulting legal challenges in the short-term future, to allow time for more reflection and voices.

10. Please examine the potential intersection of elder abuse and MAID, particularly cases of economic pressure to request MAID. Many experts have suggested that those who suffer greatly will see themselves as a burden on [redacted] health care system and families, and feel pressure to request MAID.

11. Please establish a committee to explore ways to support the capacity of families and society to care for the elderly and those who suffer any physical or emotional anguish. The question, 'why have we gotten here - to a place where ending life is seen as the solution to suffering?' would be worth exploring.

Above all, please do not dismiss the millions of Canadians who see MAID as inherently wrong and damaging to the long-term health of our society. The issues around it have not been systematically aired and clarified, and Canadians are on the verge of having to deal with decisions about their loved ones that cannot be unmade. Many aspire to a way of caring for our elderly and suffering in a meaningful rather than expedient manner. I urge you to choose a cautious and careful path on a matter that so profoundly

affects Canadians and their families.

Thank you for considering my requests.

Sincerely,

[redacted]

s.19(1)

Kingsville, ON

[redacted]

MCU / UCM

Ministerial Correspondence Unit / Unité de la correspondance ministérielle
Routing Slip / Feuille de contrôle

Document Date / Date du document: 2016-04-23
Date of Receipt / Reçu le: 2016-04-25

MCU # / # UCM: 2016-011800

Author / Auteur: [redacted]

s.19(1)

Doc Type / Type de Doc: R

Subject / Sujet: 271001
Indigenous and Northern Affairs Canada - General

Due Date / Date d'échéance: 2016-07-06

[redacted]

Sector's Due Date / Date d'échéance du secteur:

Assigned To / Assigné à: MCUED2

Assigned Date / Assigné le: 2016-05-25

FOR MCU USE
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[ ] Minister / Ministre

[ ] Minister's Chief of Staff or Assistant / Chef de cabinet ou Adjoint du ministre

[ ] MCU Manager / Gestionnaire de l'UCM

[ ] Other (pls indicate) / Autre (veuillez préciser)

_____

POUR L'USAGE DE L'UCM
INSTRUCTIONS / DIRECTIVES:

[ ] By email / par courriel

[ ] By letter / par lettre

[ ] Enclosure(s) / pièce(s) jointe(s)

[ ] Courtesy copy (c.c.) / copie conforme (c.c.)

[ ] Standard reply / lettre type

[ ] Modified standard reply / lettre type modifiée

[ ] Based on letter / Basée sur la lettre_____
signed on / signée le_____

Comments / Remarques:

INSTRUCTIONS

D: [ ] Draft response / Faire un projet de réponse
A: [ ] Further letter to be combined with a previous document (see comments) / Nouvelle lettre à joindre à un document précédent (voir remarques)
F: [ ] Action at your discretion / Donner suite à votre discrétion
[ ] Further letter to be combined with a previous document (see comments) / Nouvelle lettre à joindre à un document précédent (voir remarques)
I: [ ] For your information (no action required) / À titre d'information (aucune mesure requise)

CC:	**CC:**	**CC:**	**CC:**
CC:	**CC:**	**CC:**	**CC:**
CC:	**CC:**	**CC:**	

Closed / Fermé:

File Away / Classé:

R18-011-800

MCU ED 2 271001

Ministerial Correspondence Unit - Justice Canada

From: Wilson-Raybould, Jody - M.P. <Jody.Wilson-Raybould@parl.gc.ca>
Sent: April-25-16 10:15 AM
To: Ministerial Correspondence Unit - Justice Canada
Subject: FW: HARRY MANSON - ATTAWAPISKAT

From: [redacted]
Sent: April 23, 2016 2:34 PM
To: Wilson-Raybould, Jody - M.P.; infopubs@aadnc-aandc.gc.ca
Subject: HARRY MANSON - ATTAWAPISKAT

The Honourable Jody Wilson-Raybould
Minister of Justice and Attorney General of Canada
House of Commons
Ottawa ON, K1A 0A6

Minister of Justice and Attorney General of Canada
Dear Minister Wilson-Raybould,

Please find below, for your consideration, copies of several emails that I have recently sent to Minister Bennett.

Sincerely,

Robert Janning
Minister of Justice and Attorney General of CanadaMinister

From: [redacted]
To: carolyn.bennett@parl.gc.ca; infopubs@aadnc-aandc.gc.ca
Subject: HARRY MANSON - ATTAWAPISKAT s.19(1)
Date: Thu, 21 Apr 2016 17:23:53 -0700

The Honourable Carolyn Bennett
Minister of Indigenous and Northern Affairs
House of Commons,
Ottawa ON, K1A 0A6

Dr. Bennett,

Having previously written on a related proposal, to assist with reconciliation efforts, I am somewhat reluctant to again put pen to paper.

The matters arising in Attawapiskat however have implications across our country, and I believe it is my responsibility to bring a suggestion to your attention. I have copied my previous letter below, for information. As I

have not yet had a reply it may be that this note touches upon some of the same aspects challenging First Nation peoples.

Essentially, the recent tragic events at the Attawapiskat First Nation also present an opportunity for the Federal Government of Canada to invest in solutions - to support healing and help develop a framework that enables both individuals and First Nations to work together for the betterment of their peoples and communities.

There seems no doubt that Prime Minister Trudeau shares your commitment to addressing the needs of First Nations, needs that have gone lacking for too many generations now. And so I am hopeful, while pressing for the urgent attention required to prevent further deaths and the suffering we have seen recently with Attawapsikat.

My experience, both in writing and research as well as first-hand while raising the example of the Snuneymuxw soccer champion Harry Manson, is that teamwork brings all peoples and interests together in a positive and healing manner. It is then my belief that the rather simple and straightforward initiatives which enable sports, and the related training and events, will go a long way to finding solutions.

In this respect I would like to suggest your consideration of a proposal to sponsor a soccer team from Attawapiskat, and to have them come here to the west coast to play in The Harry Manson Legacy soccer tournament this fall. A team of just 4 young women and 4 young men would give these young people an immediate and defined goal - something positive to practice for, and look forward to. And of course it would encourage pride and a sense of self-worth, something all too often lacking on isolated First Nation reserves.

I would be pleased to provide further information at your request but would end this short note by saying that furthering this sports and team approach, along with a few days of sunshine and West Coast hospitality with those who would share their hopes and dreams, could go a long ways in changing the lives of both the young and old in Attawapiskat, as well as in the First Nation communities across the country.

My best wishes to you in the work ahead.

s.19(1)

Sincerely,

[redacted]

From: [redacted]
To: carolyn.bennett@parl.gc.ca; infopubs@aadnc-aandc.gc.ca
Subject: HARRY MANSON
Date: Thu, 7 Jan 2016 11:38:20 -0800

The Honourable Carolyn Bennett
Minister of Indigenous and Northern Affairs
House of Commons,
Ottawa ON, K1A 0A6

Dr. Bennett,

On November 7th I was pleased to write you upon your appointment as Minister of Indigenous and Northern Affairs. I have appreciated your remarks since, especially your statement on the anniversary of the UN Declaration on the Rights of Indigenous Peoples, and I look forward to supporting the Government of Canada's initiative in fostering a new Nation to Nation relationship.

In this light, having raised attention to the exceptional leadership of a First Nations soccer champion Harry

Manson, I have been fortunate to see his name now recognized in 1) The Soccer Hall of Fame, in Vaughan, Ontario, 2) Canada's Sports Hall of Fame, in Calgary, Alberta, 3) BC Sports Hall of Fame, in Vancouver, British Columbia and 4) The Nanaimo Sports Hall of Fame and Museum, in Nanaimo, British Columbia.

As Harry Manson's fame of 125 years ago has become better known I have also noticed the increasing wish to include First Nations people in the special events and everyday activities of the country. I myself have been approached to assist with tournaments and ceremonies which honour Harry Manson, and his work in bringing cultures together through sports. As you may know Harry Manson's skill and trailblazer leadership as a First Nations athlete propelled him beyond barriers of race and community. Harry Manson played on all three Nanaimo premier soccer teams during the period from 1897 to 1908, captained the Nanaimo Indian Wanderers during that entire period, and was acknowledged in the local press as "one of the best players Nanaimo has produced" after his untimely death in 1912. Harry Manson captured British Columbia and Nanaimo championships during a time when racism was prevalent, overcoming tremendous obstacles.

The Whitecaps are very interested in hosting a tribute match this season at BC Place Stadium, in front of a crowd of some 20,000 plus cheering friends and fans, in honour of Harry Manson. In turn I am very excited, as I fully expect such recognition and attention to herald a new relationship with the vibrant and growing First Nation soccer leagues.

We are then very hopeful about the possibility of working with the Whitecaps, and the opportunity to profile the skills and teamwork that again sees First Nations fielding soccer champions of the order of Harry Manson. This renaissance in First Nations sports, particularly in soccer, has just seen the First Nations Women's Soccer Team, return from the first World Indigenous Games held in Palmas, Brazil with the gold medal!

I would be pleased to provide additional information, but do want to also let you know that the foremost barrier to this exciting development comes down to a shortfall in the financial resources available to assist in hosting this event, and such tournaments as may follow. As you might imagine an event with the Vancouver Whitecaps offers many intangible benefits while restoring respect for First Nations and the healing it brings between cultures. We expect that being involved with a Whitecaps tournament will generate a great deal of public attention, and lead to similar events and competitions here in BC, as well as across the country. And we can see more gold medals to come internationally as well.

We believe this initiative complements the aspirations that you have voiced for a new relationship with First Nations, and would be very interested in speaking with a representative of your Ministry. Perhaps there would be interest by the Government of Canada in assisting with the hosting and related presentations which we expect will be part of the ceremonies? In the same breath, with all respect, I must also add that as time is a consideration we would very much appreciate hearing from you at your earliest opportunity.

As we step into this new year I would finally like to take this opportunity to add my very best wishes to you as you pursue such admirable goals as will again bring Canadians of all cultures together.

Sincerely,

s.19(1)

To: 'Danielle Belair'[Danielle.Belair@aadnc-aandc.gc.ca]; 'Carl.Wilkins@aadnc-aandc.gc.ca'[Carl.Wilkins@aadnc-aandc.gc.ca]; 'Daniel.Jaremek@aadnc-aandc.gc.ca'[Daniel.Jaremek@aadnc-aandc.gc.ca]
From: Blonde, David
Flag Status: 0x00000000
Subject: 16-011800 incoming(1).pdf

16-011800 incoming(1).pdf
Goto Record 490875 in database 2.ccm

Bonjour,

I have been assigned correspondence concerning proposed First Nations soccer-related initiatives. While the correspondence is actually addressed to Minister Bennett, the Justice Canada MCU would like to prepare a brief acknowledgement. I was therefore wondering if we could refer this matter to INAC.

Je vous remercie d'avance de vos commentaires.

Bon début de semaine,

David Blonde

Rédacteur principal (français) / Senior Writer (French)

Unité de la correspondance ministérielle / Ministerial Correspondence Unit

Ministère de la Justice Canada / Department of Justice Canada

284, rue Wellington, Ottawa (Ontario) K1A 0H8 / 284 Wellington Street, Ottawa, Ontario K1A 0H8

BlackBerry: 613-716-5450

Télécopieur / Fax: 613-957-3559

To: Blonde, David[David.Blonde@justice.gc.ca]
Cc: Daniel Jaremek[Daniel.Jaremek@aadnc-aandc.gc.ca]; Danielle Belair[Danielle.Belair@aadnc-aandc.gc.ca]
From: Carl Wilkins
Flag Status: 0x00000000
Subject: Re: 16-011800 incoming(1).pdf

T5169.pdf

Bonjour,

We've already responded to [redacted] email of April 12. Our Ontario RDG, Mauricette Howlett, responded on behalf of Minister Bennett on May 6, 2016 (attached).

You may wish to note this in your response to [redacted] but I don't think a referral is necessary at this point. Thanks. s.19(1)

Carl

Carl Wilkins
A/Team Leader, Correspondence / Chef d'équipe -correspondance (int.)
Indigenous and Northern Affairs Canada / Affaires autochtones et du Nord Canada
2[redacted]-10 Wellington Street / 2107-10, rue Wellington
Gatineau, Quebec K1A 0H4
tel: 613.301.3537
carl.wilkins@aadnc-aandc.gc.ca

>>> "Blonde, David" <David.Blonde@justice.gc.ca> 6/20/2016 12:03 PM >>>
Bonjour,

I have been assigned correspondence concerning proposed First Nations soccer-related initiatives. While the correspondence is actually addressed to Minister Bennett, the Justice Canada MCU would like to prepare a brief acknowledgement. I was therefore wondering if we could refer this matter to INAC.

Je vous remercie d'avance de vos commentaires.

B[redacted] début de semaine,

David Blonde
Rédacteur principal (français) / Senior Writer (French)
Unité de la correspondance ministérielle / Ministerial Correspondence Unit
Ministère de la Justice Canada / Department of Justice Canada
284, rue Wellington, Ottawa (Ontario) K1A 0H8 / 284 Wellington Street, Ottawa, Ontario K1A 0H8
BlackBerry: 613-716-5450
Télécopieur / Fax: 613-957-3559

To: 'manon.cote@canada.ca'[manon.cote@canada.ca]; 'josee.ethier@canada.ca'[josee.ethier@canada.ca]; 'nathalie.caron3@canada.ca'[nathalie.caron3@canada.ca]
From: Blonde, David
Flag Status: 0x00000000
Subject: 16-011800 incoming(1).pdf\Input from INAC(1).msg

16-011800 incoming(1).pdf
Input from INAC(1).msg

Bonjour,

I understand that your MCU deals with correspondence for Minister Qualtrough (Minster of Sport and Persons with Disabilities). I have been assigned correspondence concerning two sport-related proposal and was wondering if this matter could be referred to Minster Qualtrough.

Je vous remercie d'avance de votre réponse.

Bon début de semaine,

David Blonde

Rédacteur principal (français) / Senior Writer (French)

Unité de la correspondance ministérielle / Ministerial Correspondence Unit

Ministère de la Justice Canada / Department of Justice Canada

2[redacted] rue Wellington, Ottawa (Ontario) K1A 0H8 / 284 Wellington Street, Ottawa, Ontario K1A 0H8

BlackBerry: 613-716-5450

Télécopieur / Fax: 613-957-3559

To: Blonde, David[David.Blonde@justice.gc.ca]
Cc: Côté, Manon (PCH)[manon.cote@canada.ca]; Caron3, Nathalie (PCH)[nathalie.caron3@canada.ca]
From: Ethier, Josee (PCH)
Flag Status: 0x00000000
Subject: FW: 16-011800 incoming(1).pdf\Input from INAC(1).msg

16-011800 incoming(1).pdf
Input from INAC(1).msg

Good afternoon David:

I confirm that the issue raised in the attached letter falls under the mandate of the Honourable Carla Qualtrough, Minister of Sport and Persons with Disabilities. Therefore, you may refer to us.

Thank you and have a great day.

Josée Ethier

Gestionnaire des opérations p.i.
Secrétariat de la correspondance ministérielle - Secrétariat général
Ministère du Patrimoine canadien, Gouvernement du Canada
15, rue Eddy, 7ième étage, bureau 5, Gatineau, Québec, K1A 0M5
Josee.Ethier@canada.ca / Tél. : 819-953-4961 / ATS : 1-888-997-3123 / Télécopieur : 819-953-3152

A/Manager of Operations
Ministerial Correspondence Secretariat - Corporate Secretariat
Department of Canadian Heritage, Government of Canada
15 Eddy Street, 7th Floor, Office 5, Gatineau, Québec K1A 0M5
Josée.Ethier@canada.ca / Tel.: 819-953-4961 / TTY: 1-888-997-3123 / Fax: 819-953-3152

From: Blonde, David [mailto:David.Blonde@justice.gc.ca]
Sent: June-20-16 1:38 PM
To: Côté, Manon (PCH); Ethier, Josee (PCH); Caron3, Nathalie (PCH)
Subject: 16-011800 incoming(1).pdf\Input from INAC(1).msg

Bonjour,

I understand that your MCU deals with correspondence for Minister Qualtrough (Minster of Sport and Persons with Disabilities). I have been assigned correspondence concerning two sport-related proposal and was wondering if this matter could be referred to Minster Qualtrough.

Je vous remercie d'avance de votre réponse.

Bon début de semaine,

David Blonde

Rédacteur principal (français) / Senior Writer (French)

Unité de la correspondance ministérielle / Ministerial Correspondence Unit

Ministère de la Justice Canada / Department of Justice Canada

284, rue Wellington, Ottawa (Ontario) K1A 0H8 / 284 Wellington Street, Ottawa, Ontario K1A 0H8

BlackBerry: 613-716-5450

Télécopieur / Fax: 613-957-3559

To: [redacted]
Sent: Wed 7/6/2016 5:16:32 PM
From: Ministerial Correspondence Unit - Mailout
Flag Status: 0x00000000
Subject: Correspondence on behalf of the Minister of Justice and Attorney General of Canada

Dear [redacted]

s.19(1)

On behalf of the Honourable Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada, I acknowledge receipt of your correspondence concerning your sport proposals. I regret the delay in responding.

The matters you raise fall within the purview of the Honourable Carla Qualtrough, Minister of Sport and Persons with Disabilities. I have therefore taken the liberty of forwarding a copy of your correspondence to Minister Qualtrough for her information and consideration.

Thank you for writing.

Yours sincerely,

A/Manager

Ministerial Correspondence Unit

c.c.: The Honourable Carla Qualtrough, P.C., M.P.

Minister of Sport and Persons with Disabilities

To: SPORT AND PERSONS WITH DISABILITIES (Hon.Carla.Qualtrough@canada.ca)[Hon.Carla.Qualtrough@canada.ca]
From: Ministerial Correspondence Unit - Mailout
Flag Status: 0x00000000
Subject: Correspondence on behalf of the Minister of Justice and Attorney General of Canada

16-011800 incoming(1).pdf
16-011800 outgoing email(1).msg

The attached correspondence addressed to the Minister of Justice and Attorney General of Canada is forwarded to your office for action or information as appropriate.

La correspondance ci-jointe adressée au ministre de la Justice et procureur général du Canada vous est transmise pour suite à donner ou pour information.

To: Ministerial Correspondence Unit - Mailout[Ministerial.CorrespondenceUnit-Mailout@justice.gc.ca]
Sent: Wed 7/6/2016 5:19:37 PM
From: Qualtrough, Carla (PCH)
Flag Status: 0x00000000
Subject: Accusé de réception / Acknowledge Receipt

Merci d'avoir écrit à l'honorable Carla Qualtrough, Ministre des Sports et des Personnes handicapées. Votre courriel recevra toute l'attention voulue.

Thank you for writing to the Honourable Carla Qualtrough, Minister of Sport and Persons with Disabilities. Please be assured that your correspondence will receive every consideration.

MCU / UCM

Ministerial Correspondence Unit / Unité de la correspondance ministérielle
Routing Slip / Feuille de contrôle

Document Date / Date du document: 2016-05-02
Date of Receipt / Reçu le: 2016-05-02

MCU # / # UCM: 2016-012176

Author / Auteur: [redacted] s.19(1)

Doc Type / Type de Doc: F

Subject / Sujet: 100006-1
Meeting - Indigenous Affairs

Due Date / Date d'échéance: 2016-06-16

Sector's Due Date / Date d'échéance du secteur:

Assigned To / Assigné à: CS-MS-MLU

Assigned Date / Assigné le: 2016-05-27

FOR MCU USE
FOR SIGNATURE OF / POUR LA SIGNATURE DE:

[ ] Minister / Ministre

[ ] Minister's Chief of Staff or Assistant / Chef de cabinet ou Adjoint du ministre

[ ] MCU Manager / Gestionnaire de l'UCM

[ ] Other (pls indicate) / Autre (veuillez préciser)

_____

POUR L'USAGE DE L'UCM
INSTRUCTIONS / DIRECTIVES:

[ ] By email / par courriel

[ ] By letter / par lettre

[ ] Enclosure(s) / pièce(s) jointe(s)

[ ] Courtesy copy (c.c.) / copie conforme (c.c.)

[ ] Standard reply / lettre type

[ ] Modified standard reply / lettre type modifiée

[ ] Based on letter / Basée sur la lettre_____
signed on / signée le_____

Comments / Remarques:
Ref F16-011217 to CS-MS-MLU 2016-05-18

INSTRUCTIONS
D: [ ] Draft response / Faire un projet de réponse
A: [ ] Further letter to be combined with a previous document (see comments) / Nouvelle lettre à joindre à un document précédent (voir remarques)
F: [ ] Action at your discretion / Donner suite à votre discrétion
[ ] Further letter to be combined with a previous document (see comments) / Nouvelle lettre à joindre à un document précédent (voir remarques)
I: [ ] For your information (no action required) / À titre d'information (aucune mesure requise)

CC: MLU	CC: P. McCurry	CC: J. Gauthier	CC:
CC:	CC:	CC:	CC:
CC:	CC:	CC:	

Closed / Fermé:

File Away / Classé:

FIG - 01121-16
CS-MS-MLU - 100006-

Ministerial Correspondence Unit - Justice Canada

ref FIG-01121-16 to CS-MS-MLU 2016-05-18 cc.

From: Wilson-Raybould, Jody - M.P. <Jody.Wilson-Raybould@parl.gc.ca>
Sent: 2016-May-02 9:18 AM
To: Ministerial Correspondence Unit - Justice Canada
Subject: FW: I Love Attawapiskat : a campaign in support of First Nations children and youth
Attachments: Jan2016 ENG.pptx (Not Printed)

From: [redacted]
Sent: May 1, 2016 8:40 PM
To: Wilson-Raybould, Jody - M.P.
Subject: I Love Attawapiskat : a campaign in support of First Nations children and youth

s.19(1)

To the Honourable Jody Wilson-Raybould, and the office of Justice Canada,

Greetings,

[redacted] I Love First Peoples, a non-indigenous citizen's movement in support of First Nations youth and a Canadian registered non-profit organization.

I have heard your recent statements regarding reconciliation and, as a concerned citizen, am deeply encouraged that our government is taking such a strong stance in favour of changing the plight of Aboriginal peoples in Canada. Our non-indigeneous group actively works to create a bridge that will see the current walls of prejudice and misinformation broken down. WE WANT TO HELP, and we know we have the capacity to make a real difference with Canadians.

In 2014, we launched a project called I Love First Nations, to help break the cycle of poverty in the lives of First Nations children through education and the motivation to stay in school. We partnered with Katiganik Elementary School in Rapid Lake, Québec, which is considered the most disadvantaged community in our province. Within two short years, the school noted an astounding 30% increase in child enrolment. We have achieved this by creating a bridge between the community and the citizens of the city where we are based, Gatineau. Each year, we invite citizens to fill shoeboxes with gifts of all kinds for children. At the beginning of the school year, we hold a back to school celebration in Rapid Lake, where each child receives a gift-filled shoebox. Then, during the school year, we hold smaller events and shoeboxes are awarded to the children who achieve milestones in learning. Finally, at the end of the year, the children are given the opportunity to showcase their best achievements during a year-end celebration. This project has inspired hope and a new excitement for learning in the hearts of the children. For more information on this project, please visit www.ilovefirstnations.ca. I have also attached a PowerPoint presentation that further describes our activities.

Since the news of the recent suicides Attawapiskat, our team has been completely heartbroken, and considering ways by which we can help. We cannot possibly dare to call ourselves "I Love First Peoples" and sit back while the crisis unfolds.

We are writing to let you know that we wish to launch *I Love Attawapiskat*, a major initiative that will begin in our nation's capital region, with the hope and expectation that this will create a ripple effect across Canada, raising awareness and support for Attawapiskat and other FN communities facing similar hardships. We have reached out the the chiefs of the Nishnawbe Aski Nation, and expect to speak with them this week.

Our organization is still quite young, but we have a proven track record with FN children and youth, and the community in Rapid Lake. Furthermore, our team holds a wealth of experience in organizing large events and rallies and in setting up successful media campaigns. I personally have organized major festivals in Gatineau. Our director of national development, Iain Speirs, has done the same, and personally brought Mother Theresa to Canada in 1988 and organized an event that saw more than 35,000 people in attendance.

We would like to know how our government can partner with us to make this initiative a success.

Would it be possible for us to meet with your office in the coming days?

On behalf of our entire team, I thank you for your prompt attention and consideration, as we eagerly await your response.

Best regards,

[redacted]

s.19(1)

To: Ministerial Correspondence Unit - Justice Canada[mcu@justice.gc.ca]
From: Wilson-Raybould, Jody - M.P.
Flag Status: 0x00000000
Subject: FW: I Love Attawapiskat : a campaign in support of First Nations children and youth

Jan2016 ENG.pptx

From: [redacted]
Sent: May 1, 2016 8:40 PM
To: Wilson-Raybould, Jody - M.P.
Subject: I Love Attawapiskat : a campaign in support of First Nations children and youth

s.19(1)

To the Honourable Jody Wilson-Raybould, and the office of Justice Canada,

Greetings,

[redacted] I Love First Peoples, a non-indigenous citizen's movement in support of First Nations youth and a Canadian registered non-profit organization.

I have heard your recent statements regarding reconciliation and, as a concerned citizen, am deeply encouraged that our government is taking such a strong stance in favour of changing the plight of Aboriginal peoples in Canada. Our non-indigeneous group actively works to create a bridge that will see the current [redacted]s of prejudice and misinformation broken down. WE WANT TO HELP, and we know we have the capacity to make a real difference with Canadians.

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s.19(1)

MCU / UCM

Ministerial Correspondence Unit / Unité de la correspondance ministérielle
Routing Slip / Feuille de contrôle

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Author / Auteur: [redacted] s.19(1)

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Subject / Sujet: 100006-1
Meeting - Indigenous Affairs

Due Date / Date d'échéance: 2016-06-16

Sector's Due Date / Date d'échéance du secteur:

Assigned To / Assigné à: CS-MS-MLU

Assigned Date / Assigné le: 2016-05-27

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[ ] Standard reply / lettre type

[ ] Modified standard reply / lettre type modifiée

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Comments / Remarques:
C/W F16-011217

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D: [ ] Draft response / Faire un projet de réponse
A: [ ] Further letter to be combined with a previous document (see comments) / Nouvelle lettre à joindre à un document précédent (voir remarques)
F: [✓] Action at your discretion / Donner suite à votre discrétion
[ ] Further letter to be combined with a previous document (see comments) / Nouvelle lettre à joindre à un document précédent (voir remarques)
I: [ ] For your information (no action required) / À titre d'information (aucune mesure requise)

CC: MLU	CC: P. McCurry	CC: J. Gauthier	CC:
CC:	CC:	CC:	CC:
CC:	CC:	CC:	

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File Away / Classé:

To: Ministerial Liaison Unit[MLU@justice.gc.ca]; McCurry, Pam[Pam.McCurry@justice.gc.ca]; Gauthier, Julie[Julie.Gauthier@justice.gc.ca]
From: Chaar, Christina
Flag Status: 0x00000000
Subject: e[redacted]

16-012176 incoming(1).pdf
Direct incoming from [redacted](1).msg
16-012176 revised routing(1).pdf

s.19(1)

Attached **FOR INFORMATION ONLY** is your copy of an incoming ministerial letter.

Ci-joint, vous trouverez copie d'une lettre ministérielle **À TITRE INFORMATIF SEULEMENT.**

Ministerial Correspondence Unit, Department of Justice

Pentney, William

From: Legault, Yanike
Sent: May-06-16 8:19 AM
To: Pentney, William; Piragoff, Donald; Morency, Carole; Leclerc, Caroline; Taschereau, Alexia; Patry, Claudine
Cc: Assad, Michael; Oda, Michael; Hébert, Nathalie; Poliquin, Stéphanie
Subject: Fw: LCJC- UNREVISED Transcript of Wednesday, May 4, 2016 / Temoignages NON REVISE de mercredi le 4 mai 2016
Attachments: LCJC-Transcript-2016-05-04.DOCX

Good morning,

Please find attached the transcript of the May 4 Senate Legal Committee meeting.

Yanike

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Richardson, Jessica <Jessica.Richardson@sen.parl.gc.ca>
Sent: Friday, May 6, 2016 8:08 AM
Subject: LCJC- UNREVISED Transcript of Wednesday, May 4, 2016 / Temoignages NON REVISE de mercredi le 4 mai 2016

The Standing Senate Committee on Legal and Constitutional Affi

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TRANSCRIPTIONS DU COMITÉ

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Merci.

THE STANDING SENATE COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

EVIDENCE

OTTAWA, Wednesday, May 4, 2016

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 2 p.m. to examine the subject matter of Bill C-14, An Act to amend the Criminal Code and make related amendments to other Acts (medical assistance in dying).

Senator Bob Runciman (*Chair*) in the chair.

The Chair: Good afternoon and welcome, colleagues, invited guests, members of the general public who are following today's proceedings of the Standing Senate Committee on Legal and Constitutional Affairs. Today we begin our hearings for our pre-study of Bill C-14, an Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying).

We have the Minister of Justice and Attorney General of Canada, the Honourable Jody Wilson-Raybould; and from the Department of Justice: William Pentney, Deputy Minister of Justice and Deputy Attorney General of Canada; Donald Piragoff, Senior Assistant Deputy Minister, Policy Sector; Laurie Wright, Assistant Deputy Minister, Public Law and Legislative Services Sector; Joanne Klineberg, Senior Counsel, Criminal Law Policy Section; Jeanette Ettel, Senior Counsel, Human Rights Law Section, Public Law and Legislative Service Sector.

The minister has agreed to be with us today, and we've done a rejigging of the schedule, and once the minister's 90 minutes are complete and she departs, the Minister of Health will then take over and make her presentation. We're going to ask officials from both Justice and Health to remain once the ministers have departed so that committee members may have an opportunity to get into greater detail.

Hon. Jody Wilson-Raybould, P.C., M.P., Minister of Justice and Attorney General of Canada: Thank you for that introduction, and I certainly want to acknowledge you, Mr. Chair, and all honourable senators around the table. It is my pleasure to be here, and I certainly look forward to engaging in discussion.

I wanted to provide some opening remarks, and again thank you for providing me the opportunity to speak to Bill C-14, which as we know, responds to the Supreme Court of Canada's unanimous decision in *Carter v. Canada* last year. The bill introduces a federal framework around medical assistance in dying.

Medical assistance in dying is a complex and deeply personal issue. In crafting this new law, the Supreme Court of Canada recognized in *Carter* that Parliament is called upon to consider and

carefully weigh many diverse and important interests, including respecting personal autonomy, protection of the vulnerable and ensuring that the decriminalization of medical assistance in dying does not interfere with suicide prevention, respect for Canadians with disabilities and promoting well-being more generally.

Bill C-14 would establish criminal law rules regarding medical assistance in dying that address eligibility, procedural safeguards, and the framework for a monitoring system. The proposed legislation would reenact sections 14 and 241**(b)** of the Criminal Code so that it would continue to be a crime to assist another person to die or to cause another person's death with their consent, except if either of these actions were done in accordance with the rules for medical assistance in dying as set out in this bill.

Bill C-14 would exempt physicians and authorized nurse practitioners from criminal liability if they provide medical assistance in dying to an eligible person in accordance with the procedural safeguards in the legislation. It would also exempt others who might be involved in this process such as pharmacists who fill out the prescription for medication. The bill also includes a parliamentary review five years after coming into force.

The government chose this approach after thoroughly considering the full range of potential options for medical assistance in dying, in terms of the regime. As noted in our legislative background paper, which I tabled at second reading, this included analyzing and comparing regimes from other jurisdictions, including Quebec's legislation, certain American states, several European countries, and the country of Colombia, among others.

The government also relied on the consultations conducted in this country, including the work of the special joint committee, the external panel, the Provincial-Territorial Expert Advisory Group, and Quebec's multi-year study that informed the development of its own legislation in that province.

We also engaged and consulted with a wide array of stakeholders. With the benefit of all this evidence and knowledge, which exceeds even the detailed record that was before the court in the *Carter* case, the government has thoughtfully addressed this issue.

Bill C-14 would allow for greater flexibility than the laws that exist in the United States that are limited to terminally ill patients. At the same time, it does not go as far as some of the more permissive regimes in European countries. As the court noted in *Carter*, complex regulatory regimes such as this are better created by Parliament than by the courts. It is a fair, practical and balanced approach.

In terms of eligibility, I am aware that Bill C-14 would take a different approach than that suggested by the majority report of the special joint committee. Some have raised questions about

whether Bill C-14 would comply with the *Carter* decision and the Charter of Rights and Freedoms, and I would like to address those concerns.

The bill was deliberately drafted to respond to the factual circumstances that were the focus of the *Carter* case, where the court only heard evidence about people with late-stage, incurable illnesses who were in physical decline and whose natural deaths were approaching. The Supreme Court said that a complete prohibition on medical assistance in dying in the Criminal Code was a violation of Charter rights for persons in those circumstances.

Accordingly, our government has decided that issues that were beyond the circumstances and evidence considered by the court in *Carter*, including eligibility of people under 18, advanced requests, and mental illness as a sole basis for the request should be studied further and are not included in Bill C-14.

This further study is warranted as these complex issues raise distinct legal, ethical and practical dimensions that the Supreme Court of Canada did not consider.

In terms of so-called mature minors, we are mindful of the evidence heard at the special joint committee that more study is needed. Given the irrevocable nature of the procedure and the fact that minors can be particularly vulnerable by virtue of their age, especially when they are seriously ill, a cautious approach is warranted at this time.

In terms of advanced requests, when a person is unable to confirm their wishes at the time that the medical assistance in dying would be provided, the risks of error and abuse increase. The Supreme Court of Canada recognized in its 2011 J.A. decision that a person cannot consent in advance to sexual activity that would take place when they are unconscious. The court noted that the person would not be able to withdraw consent if they had subsequently changed their mind. The same concerns, I would submit, arise with respect to advance requests for medical assistance in dying where the person cannot expressly confirm or withdraw their consent.

In practical terms, in the very few jurisdictions where advanced requests for medical assistance in dying are allowed, few physicians are willing to perform medical assistance in dying under those ethically difficult circumstances. Further study of this complex issue, which was not addressed in the court decision in *Carter*, is warranted.

With respect to mental illness as the sole basis for the request, this issue is especially complex. First, I want to emphasize that the bill does not discriminate against people with mental illness. They would have the right to apply for medical assistance in dying on the same terms as all other Canadians, and would able to access it if they met all of the eligibility criteria. However, our government is mindful that allowing assisted dying for persons solely on the basis of a diagnosis of mental illness could harm efforts to promote well-being and discourage suicide more generally.

If mental illness is permitted as the sole basis for medical assistance in dying being provided, and if eligibility was not restricted to persons whose deaths have become reasonably foreseeable, it would be difficult to limit eligibility at all, on any principled basis. For example, it would be arbitrary to permit access to medical assistance in dying for people with mental illness alone but to then exclude persons with severe, but non life-threatening, physical disabilities or persons who live with other forms of suffering.

Highly permissive assisted dying regimes tend to privilege personal autonomy above all other rights and interests, which is not consistent with the Charter, nor good public policy. Parliament's task, as noted by the Supreme Court of Canada, is to:

> . . . weigh and balance the perspective of those who might be at risk in a permissive regime against that of those who seek assistance in dying.

In order to meet this challenge, we must carefully consider all of the relevant interests at stake, and not simply autonomy on its own. By focusing on the medical circumstances in Carter, Bill C-14 respects all of these rights and interests. The Supreme Court of Canada noted in *Carter* that a complex regulatory regime designed by Parliament would receive a high degree of deference from the courts. I am confident that the fair and balanced approach in this bill will withstand Charter scrutiny.

Because the purpose of the legislation requires that a person's death be reasonably foreseeable, it provides health care practitioners with flexibility to take into account all of the person's medical circumstances. By defining the term "grievous and irremediable medical condition," the bill ensures that all competent adults who are in decline while on a path towards their natural death would be able to attain medical assistance in dying whether or not they suffer from a fatal or terminal condition.

The legislation also contains the phrase "without a prognosis necessarily having been made as to the specific length of time that they have remaining," which signals that eligibility does not depend on a person having a certain number of weeks or months left to live, as in certain American jurisdictions, but only that their death be reasonably foreseeable.

Finally, I want to emphasize the importance of having a legislative response in place by June 6, 2016, when the court's declaration of invalidity this expires. Without a new law in place on June 6, the parameters of the *Carter* decision would apply, but the scope of the decision is uncertain in several respects and, as a result, there would be uncertainty as to how it would be applied in practice. Assuming for a moment that the *Carter* decision was read down, sections 14 and 241(b) of the *Criminal Code* -- so that, except for medical assistance in dying, these criminal laws would be in force -- significant uncertainty would still remain.

First, in the medical community, there is no common understanding of what a grievous and irremediable medical condition as. As such, it would be difficult for a patient who would be eligible under Bill C-14 to access medical assistance in dying. Without a clear federal law in place, physicians who may otherwise be willing to provide medical assist assistance in dying could refuse to do so because of the uncertainty.

As well, failing to define the *Carter* parameters in federal legislation could lead to a wide variation of how eligibility is applied, not only between provinces or regimes but within them. Access in rural and remote areas would be negatively affected, not only because physicians may be unwilling to provide medical assistance in dying in such an uncertain legal environment, but also because under the *Carter* decision, nurse practitioners are allowed to provide assistance.

Second, the current interim court approval process will end as of June 6. Outside of the province of Quebec, there would, therefore, be no legally binding framework to govern medical assistance in dying. In other words, there would be no mandatory procedural safeguards to prevent abuses and to protect vulnerable persons.

Guidelines published by medical regulators are not binding nor are they uniform, which further risks creating a patchwork across Canada. This could pose serious public safety risks. For instance, a patient could both request and receive medical assistance in dying on the same day. Without going through an exhaustive list of risks, needless to say it would be irresponsible to let June 6 come and go without a federal law in place.

As the court made clear in *Carter*, the risks associated with physician-assisted death can be limited through a carefully designed and monitored system of safeguards. Bill C-14 provides a responsible and balanced framework that limits those risks and puts in place those safeguards.

I would welcome the opportunity to discuss the bill and, certainly, to contribute to your study of this legislation. The approach that we took in Bill C-14 responds to the *Carter* decision with sensitivity on all of the issues that were before the court in that case, and creates a responsible and fair legal framework to permit medical assistance in dying across Canada for the first time in our country's history. This is, has been and will continue to be a transformational discussion.

Thank you for allowing me to make some opening remarks. I look forward to questions.

The Chair: Thank you, minister. We will begin those questions with the committee's deputy chair, Senator Jaffer.

Senator Jaffer: Minister, thank you for your presence here today. You certainly are not new to Senate hearings. You have often appeared at the human rights hearings, but now you are here in a different role, so we welcome you.

Minister, I firstly a clarification of the remarks you made. You said that you looked at the *Carter* decision, but although it says *Carter*, it really applies to circumstances of Gloria Taylor. Are you saying that you looked at the specific circumstances of the health of Gloria Taylor, and that that was the basis of your decision, and not the decision of *Carter*?

Ms. Wilson-Raybould: Thank you for the question, senator. It's indeed a pleasure to be back before you.

We read carefully the decision in *Carter*, and we, as I said in my remarks, certainly put forward Bill C-14 to respond to the specific circumstances as articulated in *Carter*.

Throughout the decision, in many different places, the court referred to Gloria Taylor and people like her. Our legislation responds to individuals who are approaching the end of their lives and suffering from a grievous and irremediable medical condition, where death is reasonably foreseeable. I am confident that our legislation, of course, responds to Gloria Taylor and also responds to Kay Carter's circumstances.

Senator McIntyre: Thank you, minister, for your presentation, and thank you for being here.

As you know, the Supreme Court, in both the *Rodriguez* and *Carter* decisions, were very much concerned with the issue of procedural safeguards on medical aid and dying. So were Parliament's joint committee and the Provincial-Territorial Expert Advisory Group. The bill addresses those concerns. As a matter of fact, I note that there are a number of procedural requirements that Bill C-14 introduces to safeguard the medical aid in dying process.

Minister, my question has to do with federal safeguards, as opposed to provincial and territorial safeguards. That said, if you are satisfied that a province or territory enacts safeguards that are substantially equivalent to the federal safeguards would the federal law apply in that province or territory? Likewise, if you're not satisfied, how would the federal law apply in those respective jurisdictions?

Ms. Wilson-Raybould: Thank you for the question, senator.

Bill C-14 is an exercise of the criminal law power, and, in advance of introducing this proposed legislation, I had the opportunity, as did my colleague the Minister of Health, to speak with our counterparts in the provinces and territories. I had the opportunity to speak to all of the Attorneys General on this matter.

The consensus was that the provinces and territories were looking for federal leadership with respect to medical assistance in dying, and we certainly reviewed all of the reports that you referenced, sir, and reviewed, in great detail, the recommendations of the special joint committee in terms of safeguards. Within Bill C-14, we have put in place those safeguards -- requiring two medical practitioners, requiring two independent witnesses -- and the additional safeguards that are

articulated in this piece of legislation, all of which will apply in each jurisdiction across the country in terms of what needs to be addressed by medical practitioners in order to, one, determine eligibility and, two, to provide the necessary safeguards to ensure that we are doing as much as we can to protect the vulnerable.

The provinces and territories certainly will have the ability, having to comply with the criminal law, to institute and work with their medical regulators and others to provide the space that they deem appropriate within their own jurisdictions.

Senator Cowan: Welcome, minister. You were kind enough, after the bill had been introduced, to ask me to come to see you. I expressed, at that time, my concern that the bill was too narrow and that it didn't meet the threshold of *Carter* and the requirements of the Charter of Rights and Freedoms.

You said, in your opening statement, that the bill was deliberately drafted to respond to the factual situation in *Carter*, and then, in response to a question from Senator Jaffer, you said it referred to the specific circumstances of *Carter* and *Taylor*. With respect, minister, it seems to me that it is entirely the role of the court to respond to the specific circumstances before the court. That's what a judge does, but the role of Parliament, it seems to me, is different. I refer you to the resolution that was passed, in December of 2015, to set up the joint committee that you referred to, and it talks about consulting with Canadians and experts and making recommendations on the framework of a federal response on physician-assisted dying that respects the constitution, the Charter of Rights and Freedoms and the priorities of Canadians.

It seems to me that our task, as legislators, and your task, as minister, is to produce a broader response and not one that simply responds to the specific circumstances or the factual situation before the court. Perhaps you could comment on that.

Ms. Wilson-Raybould: Thank you, senator, for the question, and it's an important question.

Maybe I'll preface my comments by saying that this is an incredibly difficult, very emotional and sensitive issue, and, certainly, I recognize all of the reports and acknowledge the work of the special joint committee that presented their recommendations and, beyond that, presented to our country the ability and the mechanisms to actually engage in a national conversation about death.

I'll repeat what I had indicated. This is a transformational shift. This is a paradigm shift in terms of the discussion that we're having. Maybe it's appropriate, at this point, to acknowledge the lives of Gloria Taylor and Kay Carter and, before those two individuals, Sue Rodriguez, that, I believe, have brought us to this place where we, in this country, are having this conversation.

To your question, in terms of thinking about the Supreme Court of Canada's decision in *Carter*, the Supreme Court was clear on two things: One, that complete and outright prohibition on medical assistance in dying is unconstitutional, violating section 7 of the Charter.

The second thing they said, as you quite rightly point out, is that it is up to Parliament to put in place the complex regulatory regime that is appropriate. We have benefited from an incredible amount of input, diverse input, that we've received, right across the country, from experts, from individual citizens, that have contributed toward this discussion. The input has been very diverse. This is the balance that we, as government, looked at in terms of drawing up and putting forward a piece of proposed legislation that would find the balance between personal autonomy and respecting the decision in *Carter*, but also --

Senator Cowan: With respect, minister, what we're talking about is the threshold -- I call it the threshold -- in *Carter*, and we're also talking about the Charter of Rights and Freedoms. Do you have an opinion that you can release to us that will confirm that this bill meets not only the threshold of *Carter* but also would preclude, so far as is reasonable, challenges under the Charter of Rights and Freedoms? Because surely none of us want to put another Carter or Taylor through this agony, ordeal. The courts were obviously bound by the facts of the cases in front of them, but we're not bound by that. Surely, it's up to us, as legislators, to anticipate future *Carter*, future *Taylor*, challenges and to meet those and to put the kind of robust regime in place, without being restricted to the factual situation in *Carter* and *Taylor*. Wouldn't you agree?

Ms. Wilson-Raybould: I think we, as parliamentarians, have an incredible task, and, now, the government has put forward our proposed response that we will substantively debate these issues.

To your question in terms of the background or the thinking behind Bill C-14, I was very pleased, as minister, to be able to table, at second reading, an explanatory paper that gets at, I believe, senator, those questions that you're asking in terms of the considerations that we, as a government, went through in terms of looking at *Carter*, in terms of balancing the diversity of interests out there, from personal autonomy to ensuring that we create the space and protection of the vulnerable, which is what the decision spoke about.

Also included within that explanatory paper, we spoke about Charter considerations. I would encourage all Canadians to read that, to understand the thinking that went into the decision.

Senator Cowan: That's not an opinion. That's a background paper.

Senator White: Thanks to the minister for being here this afternoon.

I wonder if the minister could map out what a five-year review is going to look like. Are we talking about a complete review of the legislation and possible redrafting? I've seen some five-year reviews in the past, and I wasn't always pleased with where we ended up.

Do we actually have a prescribed formula of what a five-year review would look like?

Ms. Wilson-Raybould: We have no pre-determined formula for how that five-year review will be undertaken. By putting that in there, we have recognized that this conversation we're having is not going to stop with the passage of Bill C-14. A number of areas, as you're aware, require more study. We've committed in the preambular language to have more study on those issues. We recognize that we want to be responsive to the law that will be put in place and that we ensure that we acquire and monitor the system or the law as it unfolds to be able to be responsive to the evidence we gather and to the dialogue that will continue in the country in terms of how our regime is working or how it can be improved.

Senator White: Thank you for the response. My second question is around the term "nurse practitioners." I worked in the North for many years where we had a lot of nurse practitioners. I was on a couple of provincial websites trying to see what authorities they have. Their authorities seem to be derived, when it comes to things found in this bill, around a requirement to have a physician approve or provide some level of approval for their actions. This bill certainly seems to give them more power than what I could find on the Ontario website in terms of nurse practitioners.

Is there a reason we have nurse practitioners included in this bill? Is there a necessity for them in the bill?

Ms. Wilson-Raybould: In terms of nurse practitioners, Minister Philpott and I considered the safeguards required within the bill and the recommendations of the special joint committee. We recognized the need to ensure access to medical assistance in dying across the country and that, as you pointed out, senator, in more remote areas communities sometimes don't have the benefit of a doctor let alone two doctors in place. There are substantial nurse practitioners trained in the jurisdictions where they practice that have a direct relationship those communities, live within the communities a lot of the time, and would be able to provide medical assistance in dying to address the access issues. We also recognize in terms of the various jurisdictions that they would be able to determine how nurse practitioners are trained or what involvement nurse practitioners could have.

Senator Joyal: Thank you for the opportunity to convey to you personally my preoccupation.

I was very disturbed by the statement made by the Quebec Minister of Health, Gaétan Barrette, who appeared on French CBC Sunday morning and made comments that challenge the constitutionality of the government bill, to put it in neutral terms. The reason is that the *Carter* decision opened the door to physician-assisted dying but with no reference to foreseeable death.

By introducing in the bill the criteria of foreseeable death, you limit *Carter* extensively by opening the door of physician-assisted death only to people whose foreseeable death is predictable on the basis of a doctor prognostic. That was never included in *Carter*. On that basis, you open the

door to a challenge because clause 7 clearly recognizes for all Canadians the accessibility to physician-assisted dying of the person in a terminally ill condition or the person in the condition of intolerable suffering.

My contention, when I read the bill, is that since you limit the right recognized in clause 7, the bill would be open to the *Oakes* test by the Supreme Court or by any Canadian court to see if your limit is reasonable in a free and democratic society -- section 1 of the Charter. By alleging section 1, as you know, you are open to the three fundamental questions of the *Oakes* test. I'm sorry if I'm using an arcane word around the table, but you are a lawyer and will certainly understand, and your adviser would certainly know what I'm talking about.

When the court looks into your bill, they will ask three questions. The first question is: What's the purpose of the bill? They will look into the "Whereas" of the bill and into your public statements made here or in the other house or other comments you may have made. When I read the "Whereas" of the bill, I see that the sixth one deals with an objective of the bill that contradicts *Carter*. *Carter* recognized physician-assisted suicide, and you want to exclude that in your bill.

Your bill is in clear contradiction of the interpretation of the Supreme Court. When the court asks the second and the third question, your bill will not survive the test.

Ms. Wilson-Raybould: I certainly appreciate the conversation we're able to have on this.

I'm confident that this bill not only responds to *Carter* but will withstand constitutional challenges. The purpose or the object of this bill is to ensure that we provide medical assistance in dying in this country that ensures that we respect personal autonomy while also ensuring the protection of vulnerable peoples.

This was what the court asked us as parliamentarians to do. We considered the diversity of perspectives. In terms of the public policy discussions and decisions that were made, we are providing in this bill the ability for persons who meet the eligibility criteria to have a peaceful passage to death.

While I recognize there are Charter considerations, I would submit to you, senator, that it would meet the *Oakes* test, given the discussions we've had, the diversity of voices we've heard.

Senator Plett: I want to continue with nurse practitioners. They are unable to prescribe narcotics in parts of the country. There are limitations on which diagnostic tests they can do. They are not allowed to do CT scans or MRIs. There are limitations to where they can order even an ultrasound or an x-ray. Yet, you are saying that because of logistics and because they might be in the North, we will give them that.

I have two questions. First, will you allow them, then, to prescribe drugs in the North and do X-rays that they cannot do now but they can assist somebody in dying?

My second question is on the independent medical opinion that is needed. Again, I've spent a good part of my life in some of these small communities that you are referring to. In many of these communities, nurses, or even doctors if they have doctors, live together in one house, maybe even one apartment, because of what they have there. If two nurses lived together, how much of an independent opinion is it when one nurse says to the other one that I believe this person is eligible to die?

Ms. Wilson-Raybould: I appreciate the comments and questions and recognize my previous answer with respect to nurse practitioners. Nurse practitioners are defined in the legislation. They certainly are under the laws of the provinces and territories in which they practice, so the extent of their practice will be determined by those jurisdictions.

To your question about remote communities and two nurse practitioners living in the same house, we have put in place safeguards in the legislation that insists that there is independence with respect to those two opinions. That is a situation that would have to be looked at in individual circumstances.

Senator Plett: So let's just hope it works out?

William Pentney, Deputy Minister of Justice and Deputy Attorney General of Canada, Department of Justice Canada: Senator, if I may, two points to underline further to what the minister said. One, this is creating an exemption under the criminal law, and where a nurse practitioner is involved, it would only be because the province has authorized them as defined in the statute to have that scope. That is entirely a decision for provinces to make. But the nature and scope, as you indicated, there are differences in terms of what are currently authorized for nurse practitioners.

Second, like physicians, they are a regulated profession, and we would expect the regulatory bodies to be involved in this, the provinces and territories, as they are now in regulating the scope and nature of the practice of nurse practitioners and doctors. It will be their administration and regulation that will ensure that the rules are followed.

If a nurse practitioner acts outside of this, they're committing an offence under the Criminal Code. There's a limited exemption created where the rules and processes are followed. If a nurse practitioner is not authorized by the province to do this but does it anyway, they've committed an offence under the Criminal Code that is specifically set out in the provisions of the code. In that sense, it's not as though it is intended to open up a free-for-all. It's within a regulated profession.

Senator Batters: Thanks for being here, minister. Welcome to our committee. I would like to speak about the preamble wording. You spoke in your opening statements, and it sounds like you have a significant concern in making sure that people who have mental illness are properly protected. That has always been one of my primary concerns.

When I look at the way the bill is drafted regarding the provisions about eligibility for medical assistance in dying, as you refer to it, and grievous and irremediable medical condition, the first subsection refers to just grievous and irremediable medical condition. When you go to the definition that's provided of grievous and irremediable medical condition, that's where it brings in the issue of physical or psychological suffering.

You have to go to the preamble in order to obtain your government's assertion that psychological suffering as a sole basis is excluded from this bill, but having it in a preamble is a poor way to draft a piece of legislation because it doesn't have the necessary force of law.

If you have that significant concern about these issues, and when you testified before the House of Commons committee earlier this week, you indicated your clear indication that this would be something to conform with *Carter* and to have as its intended purpose of medical assistance in dying to give competent adults who are on a path toward their natural death the choice of a peaceful passing.

If that is your real intention here, why would you have that in the preamble and why would you be studying the issues of mature minors and mental illness which clearly Canadians do not want? They have indicated that loud and clear. It's just not a good way to draft a particular piece of legislation.

Ms. Wilson-Raybould: Thank you for the question, senator. Just in terms of the eligibility criteria that are laid out in this piece of legislation, we sought to further define what "grievous and irremediable" means. Those are the four elements that you referenced in your question.

All of those elements need to be read together based on the entirety of the circumstances for the individual patient that is requesting medical assistance in dying. That patient could have a mental illness, but that mental illness cannot be the sole basis upon which medical assistance in dying is provided. It needs to be considered in the totality of the patient's circumstances.

In terms of mature minors, in terms of mental illness as a sole basis and in terms of advance directives, we put that language into the preamble because there needs to be more study on those issues. Those three issues were not dealt with, as you know, senator, in the *Carter* decision, and we have had an incredible diversity of opinion around those particular issues and want to be able to engage in substantive study to understand the risks and the benefits around those particular issues in terms of medical assistance in dying.

It was put in the preamble in part to show our commitment to looking at those issues in more detail, as we heard quite loudly and clearly from many Canadians.

Senator Batters: Also, if you intend to have safeguards in place to deal with people who may have a very serious physical illness but also have a mental illness, why wouldn't you have in place a

longer waiting period so perhaps they could actually consult a psychiatrist which takes so long in so many places in Canada, why wouldn't you require a psychiatrist's approval? Why would you simply allow, just like anyone else, two nurses to provide approval, assess competency and administer the assisted suicide?

Ms. Wilson-Raybould: Again, senator, I appreciate the question. The reality of all of the circumstances built into the eligibility criteria, particularly around grievous and irremediable, we wrote into the legislation a degree of flexibility to ensure or to provide medical practitioners with the ability, based upon their relationship with their patient, based upon the understanding of all of their medical circumstances in their totality, to make that determination. I imagine this is something that Minister Philpott will be speaking about more when she presents before the committee.

From my understanding, physicians, if there is some uncertainty, may, as a normal course of their business, refer that out for further --

Senator Batters: If you wanted that; it's not required.

(French follows -- Senator Boisvenu - Merci beaucoup pour votre présence aujourd'hui.)

(après anglais - Mme Wilson-Raybould : If you wanted that; it's not required.)

Le sénateur Boisvenu : Merci beaucoup pour votre présence aujourd'hui. Je sais que ce sujet est très complexe et très compliqué, car il fait appel à la fois à des valeurs sociales et morales. Je pense que c'est avec beaucoup de courage que vous entreprenez l'étude de ce projet de loi avec nous.

Au Québec, il y a eu une vaste consultation sur le droit à mourir de laquelle a résulté un très large consensus et le Québec a adopté un projet de loi dans ce sens. Il est évident qu'au Québec nous portons une grande attention à ce qui se fera avec le projet de loi C-14.

Il y a un avocat au Québec qui a été très actif dans le domaine, il s'agit de Me Jean-Pierre Ménard, qui est porte-parole du Barreau et qui est assez critique par rapport au projet de loi C-14. J'aimerais vous entendre au sujet de deux de ses critiques.

La première critique que Me Ménard apporte est à l'effet que la Cour suprême donne le droit d'accès à l'aide à mourir à qui le projet de loi C-14 retire. Il s'agit d'une critique très sévère, qui concerne les personnes atteintes de maladies graves et irrémédiables, mais qui ne sont pas prêtes à mourir.

Et l'autre critique que Me Ménard fait concerne la notion très floue, très incertaine, très élastique — ce sont ses mots — de « mort naturelle raisonnablement prévisible ». Il propose de biffer strictement les mots «mort naturelle raisonnablement prévisible » du projet de loi C-14. Dans le fond, cette notion pourrait s'appliquer à tout le monde, parce que tout le monde a une mort

prévisible : une semaine, deux semaines, dix ans, vingt ans. Donc, j'aimerais que vous vous exprimiez sur ces deux critiques de Me Ménard.

(anglais suit en 1450 - Mme Wilson-Raybould : Thank you, senator, for the questions ...)

(Following French in 1440 -- Senator Boisvenu -- . . . ces deux critiques de Me Ménard.)

Ms. Wilson-Raybould: Thank you, senator, for the questions. I will just say as an aside that I am learning French, so I appreciate your questions.

To the first one about the purpose of this legislation, the legislation was put forward as a result of many discussions and after hearing from many diverse groups. As you said, it's a very complex and challenging issue. It was the decision that we ensure that we provide that balance between personal autonomy and vulnerability, and ensure that we provide a peaceful passage for those individuals who are approaching death and who want to access medical assistance in dying.

That was the decision, and it was subject to much debate in terms of what that appropriate balance is right now. We made the decision that it was to provide that peaceful passage toward death.

In terms of the discussion around "reasonably foreseeable," on its own, paragraph (*d*), as you write rightly point out, everybody's death is reasonably foreseeable. However, in terms of the way that we've drafted our definition around grievous and irremediable, all of those elements need to be read together in the totality of the circumstances. We purposely drafted it that way to put in place flexibility for medical practitioners to make the determination of reasonable foreseeability on their own accord, based on the individual relationship that they have with their patients.

Further, we did not put a particular time frame around what "reasonably foreseeable" is, as they have in other jurisdictions, to provide that degree of flexibility. We thought that six to 12 months on one side was somewhat arbitrary. On the other side, if there were no time limit, or having all of the elements read together, it would open it up to be much broader.

We provided the ability and placed confidence in medical practitioners to make determinations for themselves.

Senator Eaton: Thank you, minister. I applaud your courage, and I'm sorry you were given such a short timeline to get this through.

In your preamble, where it's desirable to have a consistent approach to medical assistance in dying across Canada -- we know Quebec has its own law. How difficult do you think it will be to get all provinces and territories on the same page, so people don't go from province to province, "shopping" to see where it would be easier to get assisted medical death?

Ms. Wilson-Raybould: Thanks for the question, senator. I have had the benefit of engaging and will continue to engage with my counterparts in the provinces and territories in terms of this particular piece of legislation. From the conversations I have had with my counterparts, the provinces and territories were looking for federal leadership with respect to this issue.

I want to acknowledge the tremendous amount of work that the Province of Quebec has undertaken over many years to put in place their end-of-life legislation. I recognize that there may be different regulatory frameworks that are developed in particular provinces, and there may be different approaches in terms of medical assistance in dying or in terms of regulating medical practitioners and the like in different provinces.

Senator Eaton: Can they go much wider than you've gone in this bill, for instance? Could one province say, "Yes, we will look at mental illness and underage," or will the federal law take care of that?

Ms. Wilson-Raybould: This is an exercise of the criminal law power -- a federal power -- and all of the provisions that are contained in Bill C-14, if it goes through, will be applicable to all of the provinces and territories. That is for the eligibility criteria as well as the safeguards that are in place; all provinces and territories will have to comply with those.

The Chair: Minister, I know it's always difficult for governments to step back once they've made a public declaration, but I'm curious about what consideration was given to asking for an extension from the court in terms of the time for consideration of such significant legislation. It seems to me that if, at the same time, the request for extension had been accompanied by a request for an assessment of the constitutionality of the legislation, I think a court would have been receptive to that kind of a request.

We're hearing concerns now, as Senator Joyal mentioned, from the Minister of Health in Quebec, the Carter family, the bar in Quebec and others. I understand that the government is using time allocation, effectively closing off second reading debate in Parliament. We have to assume that the same will happen at committee and at third reading.

I understand the time frame set by the court, but why wasn't there an attempt, and why can't you'll still make an attempt, to see if more time consideration could be given to the impacts of this legislation and its constitutionality?

Ms. Wilson-Raybould: I appreciate both questions, and I'm pleased to be able to respond to them, senator.

On the first point, we did apply for an extension of the 12-month period of the Supreme Court's deadline. We asked for six months, and we received four months, hence the deadline of June 6. The court did indicate that it was an extraordinary step to take to increase the amount of time for a

government to put in place a framework. That extraordinary step was taken by the court because there was an intervening federal election, and they provided a little more time for our government to put in place that federal framework. We are committed to ensuring that we have that in place and are working very hard to do that.

In terms of a reference to the Supreme Court of Canada around the constitutional validity of this particular piece of legislation, it is my and this government's commitment, and I believe it incumbent upon all parliamentarians, to respond to what the Supreme Court of Canada asked us to do. They threw it back into our court to put in place a law around medical assistance in dying. I believe that if I were to ask or put in place a reference to the Supreme Court of Canada, the Supreme Court of Canada would hit that ball right back to us and ask us to do our jobs as parliamentarians, weighing the diversity of perspectives that exist in this country and ensuring that we fulfill our obligations and roles to find that right balance and to ensure that we uphold the *Carter* decision with a tremendous amount of respect for the Supreme Court of Canada, and that put in place the best approach for Canada.

In my respectful view, that is fulfilled by Bill C-14.

The Chair: We have time for a question from Senator Lankin. I understand, minister, you're going to have to depart briefly and then return?

Ms. Wilson-Raybould: Yes. My apologies, senators. I'm needed back in the house for a vote. My officials will still be here, though.

Senator Lankin: Thank you. I appreciate how difficult this task is, and I appreciate the sensitive balance that the government is attempting to strike. I feel a bit like my old days at policy discussions, where I said, "I generally support this, but it just doesn't go far enough." I'm in that camp right now.

But I'm eager to understand the government's concerns that led them to place restrictions on access for certain Canadians. People have spoken a lot about "reasonably foreseeable" and you've spoken to that a fair bit.

I'm going to go to the issue of advance directives. I come from a family where there's genetic Alzheimer's. I worry about this myself. For many Canadians and seniors, dementia of various types are a real-life issue that people deal with.

I'm able to give an advance directive with respect to a living will directive of "do not resuscitate." In many ways, do-not-resuscitate orders can be a medically assisted method of dying. And we make these orders when we are competent and judged to be competent.

While I recognize your cautious approach on this, I honestly don't understand all of the issues at play that give you cause for concern and a feeling that you need to review it further. So I would like

you to explain that. Beyond what's in the explanatory background paper, what bothers you, what keeps you up at night about that particular issue?

I also would like to know why on that issue, reasonable and foreseeable, you would need five years to review. Maybe it's a shorter period of time to delve into those issues. Maybe the five years is about the monitoring system, compliance monitoring, some of the other mechanisms of the bill, but not maybe these difficult issues that many Canadians want to see in place for their own access to.

Ms. Wilson-Raybould: Thank you for those questions, senator, and I hope that I can answer each of them.

In terms of the five-year review, that is a five-year review of the legislation, and as you know, in terms of the studies, there isn't a time frame put around the studies. We are committed to having one or more independent studies on those difficult issues that raise a lot of questions for Canadians, that raise a lot of questions in terms of how we can ensure that people are providing that consent.

We are, as we all know, talking about death and talking about sanctioning medical assistance in dying and what is the appropriate framework for us to put in place, and the balance is always at top of mind.

You ask what keeps me up at night. We all have our own personal reflections, personal experiences, our own values, who we are as human beings and our appreciation of life and wanting to ensure that our relatives are comfortable. You mentioned Alzheimer's. Without getting too personal, I had a grandfather that suffered from Alzheimer's for 16 years, and the thoughts that have gone through my mind, not just with respect to my grandfather, but I know everyone around the cabinet table provided their own reflections and thoughts with respect to their own personal experiences.

We're talking about a transformational shift in our country in terms of discussions around death and dying, and the safeguards that we put in this legislation are to ensure that when that final step is taken that we, as much as we can, protect vulnerable people.

If we're thinking about advanced directives, having an understanding and clarity that an individual at that time where medical assistance in dying is going to be provided have to have that conscience and understanding and thoughtfulness to know that they are providing that informed consent.

One can sign on to an advanced directive and 10 years later there isn't necessarily a confirmation that that is still the desire that that person would have if they had gone down a road into dementia or, in terms of Alzheimer's, if they weren't able to assess or understand the nature of the decision that they were making.

All that said, these are really difficult issues, and the feedback that we received was that we need to have more study around them. We need to ensure that we weigh all of the benefits and the risks, and that's what we're committed to doing in terms of these more difficult issues.

As you say, senator, advanced directives have been something that has been raised a substantial amount, but we need to ensure with something as black and white that we are ensuring that we put the protections in place and ensure that the vulnerable are protected.

The Chair: We now have the Justice officials before us. I believe they were all introduced earlier. If there is anyone else, please speak up.

What I'm going to do, with the committee's concurrence, is start a new list, because the list I have for second round dealt with questions to the minister. So I think it would be appropriate to anyone who wishes to ask questions of the officials that we will set a separate list for that.

We'll begin with the deputy chair, Senator Jaffer.

Senator Jaffer: Thank you for your presence here today. I want to talk further about the advanced directives, and I'm sure you have looked at other countries. I understand that in Belgium, the Belgium government after every five years reassesses the directives or goes back to see if they still want to give that directive. Can you give us an idea from a technical form what kind of work was done so that the advance directives were not considered?

Mr. Pentney: Perhaps I can start. With the studies that were done by the provincial and territorial advisory committee and the federal external panel and followed by the special joint committee work, clearly one of the considerations was whether people who are subject to advance directives that should be included in the proposed legislation. It's fair to say that the evidence heard and explored by all of those bodies indicated that advance directives in respect of ordinary medical treatment, outside the medical assistance in dying, present a series of complexities. Although they're quite common, they're not uniform across the country and present a series of challenges. It's also recognized that many jurisdictions don't permit it and that where it is permitted, as you said in Belgium, there is a requirement to renew the advance directive every five years.

I would also say that Canada is unique in doing this in that we have a federal criminal law power, and this is an exercise of the federal criminal law power, health is a shared jurisdiction, but as has already been indicated by the minister and as the senators would know, a significant amount of the work to give effect to this and regulate it and implement it will involve provincial regulations. The rules and roles around advance directives are not set by criminal law.

In our discussions with them, the provinces and territories wanted to know what the federal law would be, other than Quebec which is engaged in a long study, so they could do their planning. As

has been noted previously, we've done this, notwithstanding the request made at the Supreme Court, under a deadline.

There was a series of considerations in terms of whether or not and how the government would include advance directives at the end. As you'll see from the bill, the decision was that right now this transformational change being brought before Parliament and put before Canadians is limited to competent adults. But recognizing that issues around advance directives are very much alive and in question and will require a complex set of reviews and studies including with the provinces and territories and regulatory authorities, the decision was made to put the bill before Parliament as it stands and to make a solemn commitment to launch independent studies.

Senator Jaffer: In our provinces we have representation agreements that set out different things as to what measures to take if somebody becomes very ill. From what I understand you to say, will the provinces look at advance directives?

Mr. Pentney: As indicated in the preamble, the federal government will launch the studies, but there will be active discussion with provinces, territories, regulators and others in respect of each of those three topics. Although they would be federally led studies, they would involve, as did the federal external advisory panel and the special joint committee, you would expect to engage a lot with provincial and territorial regulators because provincial rules establish what, where and when advance directives are allowed; and that varies across provinces right now. Also, provincial rules and regulators will be responsible for giving effect to this. If there were a shift in the federal legislation, they would be deeply involved in administering that. All of that points to the need to work carefully with a number of experts, including the provinces, territories and provincial regulators, to assess this.

Senator McIntyre: My question has to do with reasonable and mistaken belief in section 245 of the Criminal Code. I draw your attention to clauses 2, 3, and 6 of the bill. As you know, clause (2) exempts individuals from culpable homicide and aid in dying in a situation of reasonable but mistaken belief. Clause 6 proposes to amend section 245 of the Code to exempt physicians, nurse practitioners and persons assisting them.

I note that the proposed amendment to section 245 does not include the provision concerning reasonable but mistaken belief. Why is it that a proposed amendment to section 245 does not include reasonable but mistaken belief, or perhaps we should have a separate clause?

Joanne Klineberg, Senior Counsel, Criminal Law Policy Section, Department of Justice Canada: Section 245 is presently in the Criminal Code. It's the offence of administering or causing to be administered a noxious substance to a person.

In the court ruling in *Carter*, the Supreme Court said there were only two sections of the Criminal Code that were really at the core of the prohibition against medically assisted dying:

sections 14 and 241(b). They did not identify this offence as being one that really stands in the way of medical assistance in dying. Nonetheless, we looked at the wording of the offence, and it's technically possible that it might apply to the circumstances of medical assistance in dying. It is extremely unlikely that this offence would ever be charged.

It's merely out of an abundance of caution that the exemptions were provided for section 245, not replicating the entirety of the regime of exemptions but just those simple basic ones.

The other way I can complete the answer is to say that the provision on reasonable but mistaken belief is actually a codification of a very long-standing principle of the Common Law. That principle was included in the bill to give physicians, nurse practitioners and all other providers absolute confidence that if they were acting in good faith but happened to make a mistake while behaving reasonably, they could still benefit from the exemption.

Even if that had not been stated in the other sections, that principle of the Common Law would still be available. It's still there in the rare likelihood that there ever would be a charge under section 245.

Senator McIntyre: Bill C-14 creates a new offence for forgery. As you know, a forgery offence already exists in the Criminal Code at section 366, if I'm not mistaken. Why is a new forgery offence in Bill C-14 when section 366 already exists? In the case of the new forgery offence, death may result yet punishment is less for this offence than for the existing forgery offence under section 366.

The new forgery offence included in Bill C-14 is a hybrid offence, so the Crown can proceed either summarily or by indictment. If it proceeds by indictment, the maximum is 5-years imprisonment and if it proceeds summarily, it's 18 months in prison. Why do we have this double status for forgery since forgery already exists under section 366 of the Code?

Ms. Klineberg: On the first part about why it's there when there is an existing general forgery offence in section 366, the answer is that it's not legally necessary there be a distinct offence for forgery in relation to the documents related to medical assistance in dying; but it was thought to be beneficial to bring to everyone's attention the importance of these documents and the importance of maintaining the integrity of these documents and to signal to enforcement authorities that this is a distinct form of wrongdoing that they should keep in mind if ever it comes to their attention.

In terms of why the punishments would be different from the broader and more general forgery offence, there might be circumstances of forgery that are on the lower end of the scale of seriousness. Not every incident of forgery might directly lead to the death of a person in a wrongful kind of circumstance. It's contemplating situations that are still serious that we want to bring to the attention of participants in medical assistance in dying.

Should be there a case where a document is forged, it might be forged by the medical practitioner or the nurse practitioner. Certainly, they could be subject to the charges related to murder or assisting a person to die by suicide if they've engaged in any wrongdoing.

Senator Baker: I suppose you could say it's outside the bounds of this bill but it has been raised by Senator Lankin: advance directives.

In Canada, I think every province has legislation now. Perhaps one or two do not have legislation regarding advance directives. There is no overlap with federal jurisdiction. It's entirely provincial, involving end-of-life situations, palliative care, going right down to palliative sedation, which would make somebody unconscious until death.

I'm wondering about advance directives, as they stand. I note, Mr. Pentney, that you raised the question. You said that perhaps it's prevented but this proposed legislation involves competent adults. In every piece of legislation on advance directives, it involves competent adults. It involves end-of-life care. So, the question on the mind of someone who knows a lot about advance directives would be: What is preventing the province from incorporating this particular act we're talking about into their jurisdiction of advance directives? It's a legal question. You don't have to answer it if you don't wish to.

Mr. Pentney: I would be happy to, senator. This is an exercise of the federal criminal law power. A province can act within the box that's created in terms of an exception from otherwise criminal activity.

Senator Baker: End of life activity, palliative care --

Mr. Pentney: Authorized and consented to by a competent adult. That's the limit right now, in the bill. If the bill is adopted as it stands, that will be the limit of the exemption for criminal activity and the province simply cannot expand beyond that. To the extent that a province tried to exercise its jurisdiction to allow an exemption under the Criminal Code for an individual --

Senator Baker: You're saying it's an exemption.

Mr. Pentney: That's technically what Bill C-14 creates. It reproduces a general criminal prohibition and says that, where medical assistance in dying is provided in accordance with the rules set out in the criminal law, it is not a crime. The only exemption that's allowed, now, is for a competent adult.

Senator Baker: Right now, every province has legislation involving competent adults that outlines a procedure for end of life procedures in palliative care which involves, as Senator Lankin has pointed out, certain procedures that would bring on death. She's correct in that.

You're saying, definitively, that you don't know of anything that would exempt the provinces from continuing on with their advance directives involving this very same thing -- the very same subject matter. Or would you say perhaps, there, is a legal point here that may be visited down the road?

Mr. Pentney: I'm saying that the bill before this committee creates a limited exemption from otherwise criminal activity. It limits the scope of that exemption to a situation where a competent adult, who is competent at the time of the request, has authorized the request and the other safeguards are triggered.

You may wish to explore this with health officials in terms of how it will relate, but in terms of the exercise of the criminal law power, an adult has to be competent at the time of the request, under the bill that's before the committee now, in order to qualify for the exemption.

Senator Baker: That's what an advance directive is. Thank you. Good answer.

Senator Plett: I guess this is, in a way, a follow-up on what I asked earlier. When I spoke earlier about the nurse practitioners, both the minister and you, Mr. Pentney, indicated that some of this fell under provincial jurisdiction and that the provinces would make decisions. Then, Senator Eaton asked the question of whether the federal government was the top body, and whether the provinces needed to comply with federal legislation, and I got the impression that you said yes. I'm hoping that you won't shuffle this off to the provinces and, rather, will answer this on behalf of the federal government. It's with regard to conscientious objection.

In paragraph 132 of the *Carter* decision, the Supreme Court expressly recognizes the need for balance between *Charter* rights of patients and those of physicians and allied health professionals; for example, conscientious objection. Again, to date, the answers we've received from the minister suggest that you're going to allow the provinces to decide this.

I believe, and I'm sure many others do too, that we're crossing a legal and ethical divide here, and we are talking about the Canadian *Charter*. What harm would there be in making this protection for physicians explicit in this legislation?

Mr. Pentney: Well, thank you for the question. Maybe I can start, and Laurie can supplement the answer.

The Supreme Court in *Carter* recognized, among other things, that health is an area of shared jurisdiction. There are aspects of it that can be addressed by the federal government and others that can be addressed by the provincial government. They acknowledge that the issue of conscience rights is something that will need to be considered as it goes ahead.

The second element of the answer, I think, is that nothing in the bill compels any medical practitioners to provide this. The bill creates an exception and an authorization in the criminal law, but does not compel.

The third element would be that the rules about what medical practitioners must do and how they must do it in terms of professional practice are provincial rules: It's simply not within the scope of the federal criminal law power to prescribe those areas of activity, and there are other Supreme Court of Canada decisions involving efforts by the federal government to regulate health care that have determined there are limits on the scope of the federal powers.

The last part of this would be that whether or not there is anything in this or other legislation, under the *Canadian Charter of Rights and Freedoms*, physicians, nurse, nurses, practitioners and you and I have conscience and freedom of religion rights that are guaranteed by the *Charter*, and would apply, as I say, whether or not this is here.

Because the federal law doesn't compel anyone to do anything in that sense in terms of medical practitioners, it wasn't viewed as impinging on the conscience rights of physicians. The government has certainly recognized those are important considerations, and we know there is active consideration and discussion going on in provinces and territories around it.

Senator Plett: Again, this is probably provincial jurisdiction, but we know very well that in abortion laws, for example, people that do have conscientious objection to this have been either let go from their positions, or they get involved. What's preventing this from going in exactly the same direction, and why would we not want to guarantee them that they will not have to take part, nor will they have to refer them to anything other than a government website?

Mr. Pentney: Again, I think that nothing in the bill compels medical practitioners, in that sense, to participate or to do anything.

Senator Plett: Unless the provinces tell them to.

Mr. Pentney: As I said, I think the other examples you're referring to relate to the nature and scope of provincial decisions around regulatory expectations for doctors and nurse practitioners.

Senator Joyal: I would like to come back to the issue of balance between the objectives stated in the preamble and the impact of the *Carter* decision. I think the bill fails because it doesn't recognize that what is included in *Carter* is, essentially, assisted suicide.

The Quebec law is essentially a terminally ill law. *Carter* never gave the terminally ill the right to access physician-assisted death. By excluding assisted suicide from the bill, in my opinion, you would have to allege under Section 1 of the *Charter* that, in a free and democratic society, it is allowed to exclude assisted suicide. But in the middle of subparagraph 6 of the preamble, you say that the bill strikes the most appropriate balance between the autonomy of persons who seek

medical assistance in dying -- the persons to whom Senator Lankin referred -- on the one hand, and the interests of vulnerable persons in need of protection and those in society on the other.

In other words, you assimilate in your reasoning that people look for suicide assistance as vulnerable persons. In my opinion, it fails. No court will recognize that the objective of this bill meets the criteria of *Carter*. That's why I think that, because you limit this bill to foreseeable death of terminally ill people (who [unintelligible] on the Quebec legislation) you, in fact, go far below what *Carter* states. That's where it will fail.

And you know it will be challenged very soon if Parliament decides to adopt it without removing the criteria that you have added to *Carter* to limit the scope of *Carter*. That's where I feel the explanation you give is defective.

Mr. Pentney: Thank you, senator. I will start and maybe my colleagues will wish to supplement.

First, as the minister noted, this represents a seminal change in the law in Canada authorizing physician-assisted dying as an important legislative choice. In doing that, the government certainly did pay careful attention to *Carter*, and a careful reading of *Carter* would indicate, as the minister said, that a complete prohibition on physician assistance is a violation of section 7.

Second, a complex regulatory regime is better designed by Parliament than by the courts. Third, it would be up to Parliament to decide whether to take up that obligation and to try to create a complex regulatory regime. Fourth, if they did so, a great deference would be shown. The court drew the distinction between an absolute blanket ban, which is said is not a complex regulatory regime. On the other hand, a complex regulatory regime, they acknowledge in black and white, will be given deference.

Now, a careful reading of *Carter* has to include the number of references to the situation of Ms. Taylor and people like her. The culminating and core paragraph of *Carter*, paragraphs 126 and 127 -- I'll quote from paragraph 126:

> To the extent that the impugned laws deny the s. 7 rights of people like Ms. Taylor they are void by the operation of s. 52...

Paragraph 127, they set out the definition of grievous and irremediable and then:

> The scope of this declaration is intended to respond to the factual circumstances in this case. We make no pronouncement on other situations where physician-assisted dying may be sought.

Next, the courts that have interpreted *Carter* since in the individual applications, and I quote Justice Perell in Ontario in the case of A.B. -- there are publications bans on the names around these individuals, but to quote him on his interpretation of the scope of *Carter*, he says it refers to:

> ... a grievous medical condition connotes that the person's medical condition greatly or enormously interferes with the quality of that person's life and is in the range of critical, life-threatening or terminal.

Justice Martin in Alberta, again quoting *Carter* and giving effect to it in a case before the court:

> I have no difficulty in concluding that ALS is a grievous and irremediable medical condition. It is widely understood to be a progressive and ultimately terminal disease that has no cure.

In all of those circumstances, the government has decided that it will focus first on this step, on people who are heading towards death, and it has neither chosen a time limit of weeks or months, as is either in perhaps the Quebec legislation, depending on how you interpret end of life, but definitely in the American; nor the alternative of simply leaving it open ended, that a person who is suffering and by virtue of the suffering should have access to it. It is decided that where death -- and I would again commend the legislation to the honourable senators. It's the grievous and irremediable condition defined by four things culminating in and death has become reasonably foreseeable.

By virtue of all of those circumstances, the government has decided that is the policy choice that it wants to put before Canadians and before Parliament, and that is the choice it will defend. I think on any interpretation of *Carter*, it does not forbid that, and so it puts it back to Parliament to determine whether that is a limit that ought to now be put in place. That's the clear choice that's before the court. It's not simply compliance with *Carter* but it has to be compliance with the Charter, and ultimately it will be the question of whether or not this decision for Canada represents a reasonable limit prescribed by law in a free and democratic society.

Senator Batters: Thanks very much. Ms. Klineberg, in providing us with briefing on this bill this week, you described some requirements that the federal government has included in this bill, and you detailed the two different types of assisted dying.

First of all euthanasia where lethal injection would be administered by a medical practitioner, and secondly medical-assisted suicide, where a prescription is written by a medical practitioner and then the patient would take that prescription medication themselves.

For the euthanasia situation, the Liberal government bill indicates that the doctor or nurse practitioner in this bill would determine the patient consent initially and then they would have to reconfirm that consent right before that doctor or nurse practitioner would administer that lethal injection.

But for assisted suicide, the determination of the patient consent would be determined initially when they're given the prescription, and then it's possible that the patient could keep that

prescription without using it for, I don't know, three years; so there's no requirement to re-determine consent.

Given that, I put it to you that this arrangement basically does provide Canada with advance request or advance directive. In a situation that could so drastically change where we're dealing with very vulnerable people who could be harmed, potentially killed -- no one may ever know about those circumstances -- why would such a wide open situation be allowed contrary to the government's intent voiced in the preamble that advance directives would not be allowed under this legislation?

Ms. Klineberg: There are several aspects to that question, so I'll do my best to answer them.

First, in terms of the ability of a person to obtain a prescription for the purposes of self-administering a substance to cause their own death, it is still the person who, when the time comes, would be self-administering the substance. They would have to have some degree of ability to do that for themselves, so it's still their choice when they take that action to do it.

So in that sense it's not an advanced request in the way in which that term is used when we're talking about advance directives. The patient is still the one responsible for taking the action. They take the action at a later point than the point at which they receive the substance, but it's still their choice at every step of the process. There's nothing in their level of ability to make the decision for themselves that changes.

The Chair: Ms. Klineberg, I have to interrupt. I've just been advised that the Minister of Health is standing and waiting. I didn't recognize her, and I apologize. I'm going to ask you to expand on that later because we're going to ask you to remain when the minister is returning and the individual senators who have not had their questions posed yet will have an opportunity later to do so.

Senators, now joining us is the Honourable Jane Philpott, Minister of Health for Canada. Also at the table from Health Canada is Simon Kennedy, Deputy Minister. The minister is with us for approximately an hour. After that, Mr. Kennedy will be joined at the table by his colleagues from Health Canada. We're kind of jumping all over the place today because of the ministers' requirements to be in the house. We are asking officials from Justice to stay. The Minister of Justice will return later on.

Officials from Health I should mention, Abby Hoffman, Assistant Deputy Minister, Strategic Policy Branch; Helen McElroy, Director General, Health Care Programs and Policy Directorate, Strategic Policy Branch; Sharon Harper, Manager, Continuing Care Unit, Strategic Policy Branch.

Minister, thank you for being here; I apologize for keeping you cooling your heels, but you now have the opportunity to make your opening statement.

Hon. Jane Philpott, P.C., M.P., Minister of Health Canada: Thank you very much, Mr. Chair and honourable committee members. I'm very pleased to be here today to speak on the subject of medical assistance in dying. I haven't had the opportunity to meet all of you in person, but it's a real honour to appear at this committee and to respond to your questions and concerns.

As you may know, earlier this week I had the opportunity to present and answer questions from the House of Commons Standing Committee on Justice and Human Rights, and I would like to take the opportunity today to reiterate some variation on those comments before taking your questions.

I'm also aware that the Minister of Justice has presented at least a portion of her time with you earlier today and will be coming back. There are many areas, as you know, that she has a particular ability and expertise to speak to. I will be using this time to speak to questions that may relate to my health portfolio and will be pleased to answer your related questions.

As you know, last year the Supreme Court of Canada declared that the criminal prohibitions on assisted dying were unconstitutional and now the Senate has the opportunity to review the proposed government legislation that will amend the Criminal Code to allow medical assistance in dying.

Some of you may know that I'm a family doctor, and I've had countless conversations with people at the end stages of their lives. I can tell you, as you probably very well know yourselves, that conversations about the end of life can be incredibly challenging, yet it's such an important conversation for us to have, whether it's with our patients, our loved ones, or whether it is as a society having a conversation about what we would desire at the end of our lives.

They are difficult conversations sometimes for health care providers because in some cases their education may not have adequately prepared them for discussing, let alone providing, the support that patients desire at the end of life.

First and foremost in our consideration of these matters was our responsibility to protect the most vulnerable in our society, and our proposed legislation will do this, while at the same time respecting the decision of the court.

(French follows -- Dr. Philpott cont'g - Nous voulons laisser savoir à ces Canadiennes.

(après anglais – Mme Philpott cont : ...respecting the decision of the court.)

Nous voulons laisser savoir à ces Canadiennes et Canadiens que nous comprenons leurs inquiétudes et que nous croyons que les mesures de sauvegarde mises en place avec ce projet de loi feront en sorte que les droits des personnes les plus à risque seront protégés.

(anglais suit – Mme Philpott cont : We have heard from others...)

(Following French -- Dr. Philpott cont'g - . . .les plus à risque seront protégés.)

We have heard from others who feel that the proposed legislation doesn't go far enough, who would like to see eligibility expanded in certain areas. We would like to thank these Canadians as well for speaking up on behalf of people who are suffering.

As we strive to meet the needs of Canadians at the end of life, we encounter a system that can sometimes frustrate attempts to respect personal autonomy.

(French follows -- Dr. Philpott cont'g - Nous voulons tous un système où . . .)

(après anglais – Mme Philpott cont : ...attempts to respect personal autonomy.)

Nous voulons tous un système où le respect de l'autonomie individuelle forme la pierre angulaire de toutes les politiques. Nous voulons également un système où les droits des plus vulnérables sont respectés et protégés. Ce projet de loi est une pièce importante du casse-tête quand vient le temps de faire en sorte que les Canadiennes et Canadiens aient non seulement accès à une bonne vie, mais aussi à une bonne mort.

(anglais suit – Mme Philpott cont : It's about empowering patients to take...)

(Following French -- Dr. Philpott cont'g - . . . , mais aussi à une bonne mort.)

It's about empowering patients to take control of their own narrative and ensuring that Canadians can receive compassionate care as they approach the end of life.

As you know, we listened to Canadians and stakeholders before we developed this legislation. As the Minister of Justice has no doubt articulated, we reviewed the proposed legislation very closely to ensure its consistency with the Charter. We looked closely at the *Carter* decision to ensure that individuals in those circumstances would have access to the care they needed to alleviate suffering, including the option of medical assistance in dying.

Our commitment as a government was to respond to the *Carter* decision. That necessitates changes to the Criminal Code that will protect health care professionals as they support patients in their decision-making.

At the same time, we are committed to taking the time required to address additional and more complex questions where we believe more time and study is needed.

(French follows -- Dr. Philpott cont'g - À titre d'exemple, le projet de loi établit ...)

(après anglais – Mme Philpott cont : ...more time and study is needed.)

À titre d'exemple, le projet de loi établit un âge d'éligibilité minimum de 18 ans, soit l'âge de la majorité dans la plupart des provinces et territoires. Cette approche nous paraît appropriée compte tenu du caractère unique et irréversible d'une telle décision.

Nous savons que la capacité à prendre des décisions relatives à la santé n'est pas liée strictement à l'âge et que, selon la province, le droit de refuser un traitement médical ou de consentir à celui-ci peut être obtenu dès l'âge de 14 ans, par exemple.

(anglais suit – Mme Philpott cont : We faced similar challenges in considering...)

(Following French -- Dr. Philpott cont'g - . . . dès l'âge de 14 ans, par exemple.)

We faced similar challenges in considering this matter of advanced directive. The Supreme Court did not deal with this issue in *Carter*, and the views of Canadians, as you're well aware, are deeply divided.

(French follows -- Dr. Philpott cont'g - Après 30 ans à pratiquer la médecine, je suis . . .)

(après anglais – Mme Philpott cont : ...as you're well aware, are deeply divided.)

Après 30 ans à pratiquer la médecine, je suis bien au fait des inquiétudes des Canadiennes et Canadiens qui souffrent en fin de vie, et je comprends pourquoi certaines personnes pourraient considérer avoir recours à des demandes anticipées afin d'accéder à l'aide médical à mourir.

Toutefois, nous devons prendre en compte les questions complexes liées aux politiques et à la pratique médicale que soulèvent les demandes présentées à l'avance.

(anglais suit – Mme Philpott cont : By their very nature, advanced requests...)

(Following French -- Dr. Philpott cont'g - . . . soulèvent les demandes présentées à l'avance.)

By their very nature, advanced requests are made before they are needed. Even if reviewed regularly, they would be enacted only when a person has lost competence or is no longer able to communicate. This means that the final consent, a key requirement in most assisted dying regimes around the world, could not be verified by a health care provider or anyone else.

(French follows -- Dr. Philpott cont'g - Les groupes d'intervenants en soins . . .)

(après anglais – Mme Philpott cont : ... a health care provider or anyone else..)

Les groupes d'intervenants en soins de santé ont souligné que les directives préalables concernant d'autres formes de traitement médical peuvent être très difficiles à respecter et que les répercussions seraient plus significatives dans le cas de l'aide médical à mourir.

(anglais suit – Mme Philpott cont : The proposed legislation also, as you know...)

(Following French -- Dr. Philpott cont'g - . . . dans le cas de l'aide médical à mourir.)

The proposed legislation also, as you know, does not permit eligibility solely on the basis of suffering from mental illness. There is no denying that mental illness can cause profound suffering. However, illnesses such as chronic depression, cognitive disorders and schizophrenia raise particular concerns with respect to the matter of informed decision-making. We have consulted numerous stakeholders on this issue and concluded that the nuances are not sufficiently understood at this time to allow safe and appropriate legislation to be crafted.

To that end, the government is making a commitment to mandate one or more independent studies on the questions of requests by mature minors, advanced requests and requests where mental illness is the sole underlying medical condition.

Bill C-14 also includes a clause which requires Parliament to conduct a review of the legislation five years after Royal Assent. This will allow for a parliamentary review of these complex issues as well as the evolving experiences of Canadians in implementing medical assistance in dying.

Finally, I cannot discuss this legislation without a reaffirmation of the importance of improving access to high-quality palliative care for all Canadians. Our government is firmly committed to investing in this area, and I look forward to working with provinces and territories to ensure equitable access to all options for care at the end of life.

(French follows -- Dr. Philpott cont'g - Nous croyons que ce projet de loi . . .)

(après anglais – Mme Philpott cont : ...for care at the end of life.)

Nous croyons que ce projet de loi valorise l'autonomie individuelle des Canadiennes et Canadiens conformément au jugement de la Cour suprême dans Carter, tout en assurant la protection des Canadiennes et Canadiens vulnérables ainsi que les droits de conscience de fournisseurs de soins de santé.

(anglais suit – Mme Philpott cont : We know that this legislation is...)

(Following French -- Dr. Philpott cont'g - . . . de fournisseurs de soins de santé.)

We know that this legislation is only part of the conversation. That's why I want to take the opportunity to highlight our government's commitment to palliative care. Canadians have resoundingly told us they want to receive care at home, and we have listened and are prepared to make significant investments of $3 billion over the course of our mandate to help deliver better home care for Canadians, including palliative care.

(French follows -- Dr. Philpott cont'g - J'ai déjà communiqué avec mes collègues . . .)

(après anglais– Mme Philpott cont : ...care for Canadians, including palliative care.)

J'ai déjà communiqué avec mes collègues dans les provinces et les territoires pour discuter des transformations nécessaires à notre système de soins de santé pour permettre les soins à domicile, y compris les soins palliatifs qui sont une priorité partagée.

(anglais suit– Mme Philpott cont : The bill we have tabled ...)

(Following French -- Dr. Philpott cont'g - . . . palliatifs qui sont une priorité partagée.)

The bill we have tabled is the product of careful consideration, of the need for personal autonomy, access to health care services, protection of vulnerable people and the conscience rights of providers, as well as the clear support that Canadians have voiced for this change.

I want to thank everyone who has thoughtfully and respectfully engaged on this challenging issue. I know this committee will hear a wide range of views and opinions over the coming days. I look forward to following your discussions, and I am looking forward to time to interact this afternoon.

The Chair: Thank you, minister. We'll move to questions now, with Deputy Chair Jaffer.

Senator Jaffer: Thank you, minister, for being here. I'm very pleased to hear you emphasize palliative care. As you know, we have all received many, many emails, and one of the biggest criticisms is about palliative care. So I encourage you to move fast on that.

I have many questions, but I'll start off with clause 241.2(2)(a), where it says: "A person has a grievous and irremediable medical condition if they have a serious and incurable illness, disease or disability. . . ."

I'm curious as to why you used "incurable" as a synonym for "grievous and irremediable". "Incurable," as I understood when I read the *Carter* decision, was not in that, so you have sort of expanded it a bit. I would like to hear from you as to your reasoning for that.

Ms. Philpott: First of all, just to follow up on your comments about palliative care, I want to say that I know the Senate has done some incredible work on this, and several senators have produced some very important reports about the need for palliative care. I look forward to working with folks in the Senate. We will need your support as we move forward on that. I'd be happy to discuss that in more detail later.

In terms of the wording that you are referring to there, there was an attempt made to give some measure of an understanding of the concept of grievous and irremediable. There was a need for

elaboration to clarify that, for instance, there are grievous and irremediable conditions that may be benign, episodic and self-limited. There was a desire, within this legislation, to put enough of a framework around it that it would support health care providers who were trying to determine whether someone would qualify.

Senator Jaffer: Thank you for recognizing the work of the Senate on palliative care. I would be remiss if I didn't mention former Senator Carstairs for the tremendous work she has done on palliative care.

I would like to follow this up with the issue of the nurses. We are fortunate that you are a medical practitioner as well. A number of questions have come up about nursing. I, and, I'm sure, many of my colleagues, have received emails about you including nurse practitioners in the bill. One of the challenges that I have heard of is that you may include this. But, in my province of B.C, especially, I've heard from nurses saying, "We've been told that we may be included in the bill," but their provincial bodies have not set up a protocol as to how they can practice this. I'm wondering what discussions you've had with the provincial professional bodies as to these nurses. You may exempt them, but they may get punished by their provincial bodies.

Ms. Philpott: Thank you. It's an excellent question. Again, I will go back to just letting you know that I did meet with Senator Carstairs, whom I respect greatly, and had great conversations with her and look forward to working with her in the future as well.

In terms of the matter of nurses, as you can imagine, there are a number of reasons. One is, first of all, I must say I have tremendous respect for nurses and nurse practitioners, who I've worked with closely over the years. I know that, in my own province of Ontario, for instance, nurse practitioners enjoy quite a wide scope of practice. It's not the same as family doctors, but, in many regards, there's a large overlap in scope of practice between nurse practitioners and family doctors. In one part, we wanted to acknowledge, of course, that this was not unreasonable to include in their scope of practice.

I would say that the largest driving force for why we decided to include nurses and nurse practitioners in the legislation was the fact that we need to ensure access. So, when we determine, as a government, that we believe that access to medical assistance in dying is perceived to be a medically necessary service, we need to be sure, as you know, under the Canada Health Act, to deem that all medically necessary care be available and accessible across the country, as part of the principles of the Canada Health Act.

In remote and rural situations, we knew that there would be challenges around access. As you may know, in the Far North, for example, there are many places where doctors are not readily available.

The matter of regulations, as you very clearly said, lies in the hands of provinces. I can tell you that my officials are working very closely now with the provinces and territories around those regulations. We hope that they will be rather consistent across the country, but we recognize that the regulations as to what lies within the scope of practice do differ somewhat from province to province. I will be very much looking forward to working with the provinces and territories to encourage them to look at how far they can allow the eligibility of this particular kind of care to be part of the scope of practice of nurse practitioners.

Senator White: Thanks to both of you for being here, particularly the minister. Twice now, I've heard this afternoon about the parliamentary review in five years, which I think is excellent.

What type of reporting requirements will we put in place with this legislation so that we can actually look province by province to ensure that it's being followed, first, and, second, that we have a good understanding of what it should look like in five years?

Ms. Philpott: That's a very important question. I think what may not come out as strongly in the legislation but what you may have heard us talking about as the legislation was tabled was the fact that we will be putting in place a rigorous monitoring system. It reads in the legislation that there's a requirement for the medical practitioner to report and to fill out appropriate paperwork, as it were, related to the practice.

We've, again, been working with the provinces and territories. Some of them have done quite detailed work in terms of looking at the kinds of details that they would require health care providers to report. I would like to see not only quantitative details in that in terms of how many people have accessed the care and what actual medication they received and what the timing was around that, but, hopefully, there will be much opportunity, as well, for qualitative reporting in terms of any of the challenges that were faced.

One or more committees will get under way to address these more complex questions that we don't feel that we were able to fully land on up to this point. That monitoring system, which will be a pan-Canadian system, may have a little bit of variation from province to province, according to their decisions on that. I think that we will have, actually, quite a robust amount of information available that will inform those decisions.

Senator White: Thanks for that. What would those committees look like that will be doing that work? Are we talking about committees of Parliament, committees of government or committees of Justice?

Ms. Philpott: My understanding is that they would be committees of Parliament. Having said that, I don't think that we've landed entirely on what those are going to look like. We have made a commitment to provide more details on that in the fall, and that would be an area that I think the Senate would be in a good position to be able to give some recommendations on. We have made

the commitment, in the legislation, to establish one or more committees to look at those complex matters.

Senator White: Thank you very much, minister.

Senator Cowan: Welcome, minister. I have a couple of questions. I'll try one, and, if I don't get to the second, I'll defer the second to the second round.

You've spoken, a number of times, about the importance of having conversations with the provinces and territories, and these are ongoing. But what happens if one or more of the provinces simply doesn't take any legislative or regulatory action? I know one, at least, that has no plans to do so. Do you think that inaction or lack of action would have an effect on your desire, and, I'm sure, our desire, to make sure that whatever regime is put in place is sufficiently robust that it would provide equal access, equal opportunity and equal regulation and equivalent availability of this medical service from coast to coast to coast for all Canadians?

Ms. Philpott: Thank you for that question. As you know, fundamentally, this is a piece of legislation that addresses the Criminal Code in terms of protection for health care providers to exempt them from criminal liability in terms of their participation in supporting patients with medical assistance. In that sense, a medical practitioner in the country working within this legislation and the associated regulations -- you folks are the experts on this -- would not be prosecuted.

You point out the fact that there may be some arguments from some provinces that they don't necessarily want to agree that that's a medically necessary service.

Senator Cowan: Let's assume that one or more provinces make no legislative or regulatory intervention at all. Are you satisfied that if this bill were passed in its current form, there would be equivalent equal opportunity and equal access across the country?

Ms. Philpott: I'm confident that this would provide the adequate protection for the health care providers.

Senator Cowan: I'm not talking about health care providers. I'm talking about access for the patient.

Ms. Philpott: Access is another question, but as you know, we have the challenge of access on other issues in Canada that we deem to be medically necessary services. We've had that conversation with provinces around other issues of access, and we've actually made encouraging progress in terms of making sure that medically necessary services are accessible across the country.

Senator Cowan: There has been some discussion -- and I think Senator Lankin raised it earlier -- around the issue of palliative sedation and do-not-resuscitate orders, which are common across the country. You as a practitioner have a great deal of experience with that sort of thing and providing pain medication for people, knowing full well that if sufficient medication is provided in increasing doses, the result is death.

How do you compare that it's okay and that we and you understand that, but yet you're not prepared to recognize the desires, I think, of large numbers of Canadians to have embedded in this legislation the right to provide by way of advanced directive for medical assistance in dying. How do you reconcile those positions?

Ms. Philpott: You're absolutely right that there have been a number of approaches to end-of-life care in the past where people make the decision not to deliberately extend life. By instituting a do-not-resuscitate order, it's an act of omission as opposed to an act of commission. This legislation allows an act to be committed as opposed to not instituting an act that would keep a person alive.

Having said that, I would also say point out that I think what you're getting at is the issue of advance requests that are obviously acceptable in the case of a do-not-resuscitate order but we've not necessarily implemented them here. There are a number of reasons that we took into consideration for deciding not to include advance requests at this time. In part, it's related to some of the challenges we know health care professionals find in instituting other kinds of advance directives. We heard this quite loudly and clearly from organizations like the Canadian Medical Association, for instance, and other agencies, that it can actually be incredibly challenging to know in advance and be able to reaffirm a person's wishes in advance.

So while those are very different circumstances, it's part of what made us realize that we weren't ready to make a decision on advance directives at this time.

Senator McIntyre: Thank you, minister, for being here today.

I would like to go back to the issue of the monitoring regime. The bill is very clear: It authorizes the Minister of Health to make regulations creating a monitoring regime. For example, new subsection 241.31 creates legal obligations on physicians, nurse practitioners and pharmacists. It also creates offences for failing to comply with regulations on monitoring.

That said, does Parliament have jurisdiction to collect information for the purpose of monitoring medical aid and dying? Should we leave this to the provinces?

I'm asking you this question because -- and I'm sure as you will recall -- the external panel on options for a legislative response to *Carter* heard support for oversight mechanisms, but there was no agreement as to whether it was appropriate for that oversight to be done at the federal level.

Could I have your thoughts on that, please?

Ms. Philpott: You've alluded to some of the challenges in our wonderful system where health care is a shared responsibility between the federal government and the provinces.

This is something where we believe the federal government needs to play a role, and many provinces are very happy that we will play a role in taking some responsibility and using some of our federal resources -- things like the Canadian Institute for Health Information. My deputy minister can give you an idea of some of the other pan-Canadian organizations that are comfortable with collecting pan-Canadian data. So we are well placed to try to gather some of that information.

As you have indicated, however, it may be that we would suggest a particular set of data that we would like to collect and monitor this information. We will recognize, of course, that provinces will have jurisdiction in terms of further developing that. They may add to that themselves, or there may be some portion of it that they won't be a part of, but it will be an area that we'll need to discuss very closely with the provinces and territories.

On the basis of past experience, we have had a very positive relationship with the provinces and territories on the gathering of health information to inform future decisions.

Senator McIntyre: And hopefully you'll reach a consensus.

Ms. Philpott: We certainly hope so.

Senator Joyal: I have a problem with your intention to defer the implementation or the access to physician assistance in dying to three groups of people: advanced directives, mature minors and mentally ill people. I will tell you why. Legally, I think your bill is going to be struck down. It's because you exclude those people without determining the number of times within which those people will have access to their rights.

Because we're talking about a right recognized in the Charter. A patient has a right. A patient in Canada who suffers grievous, irremediably and who cannot tolerate that suffering has a right to physician-assisted dying. This is *Carter.* When you exclude those three categories without establishing a clear deadline within which Parliament will legislate the specific conditions or safeguards that might be totally reasonable and rational, I think you fail to implement the right in *Carter*, and the right they have under the Charter.

We have heard that at the special joint committee, from the external committee that was appointed by the previous government -- the expert panel. Benoît Pelletier, the lawyer, told us that by excluding the mature minor -- blank -- you will open the challenge under section 15. In a decision in 2009, the Supreme Court has already established a criterion under which a mature minor has a right to decide for himself or herself. It is section 95 the decision 2009, *A.C. v. Manitoba (Director of Child and Family Services).*

There are seven clear criteria the court stated. That was in 2009, by the way -- seven years ago. So the Supreme Court has already established the benchmark.

For you to just say, "We'll push that in future," in my opinion, deprives patients -- we're talking of the rights of patients -- it's not the rights of doctors; it's the rights of patients we're talking about here -- the right to have access to physician-assisted dying for people who are suffering intolerably.

That's why I think your bill will not meet the test of the court -- being challenged by a mature minor who will be able to answer the seven criteria because the bill is not humane -- establishes a system under which, for an unlimited period of time, people will be waiting what Parliament will decide one day.

I can't accept your arguments, I humbly submit to you.

Ms. Philpott: Thank you for your comments. I'm pleased to hear your perspectives on this.

I want to underscore to all of you -- and I hope you will accept this -- that this piece of legislation marks a monumental change for us as a society, and I don't think we should underestimate how big of a change this is.

This decision was made, as you say, for the reason that we needed to respond to a Supreme Court decision. That Supreme Court decision was made to respect the rights of those individuals to be able to choose the end of their life, to be able to be put out of their suffering, and we absolutely fundamentally affirm the autonomy of individuals and their right to be able to receive this care. That is why we have responded to the court decision under a very short timeline.

The Government of Canada has other principles that it needs to uphold at the same time, and the solemn responsibility that all of us undertake when we are here representing Canadians is that we are also asked to protect life. We are also asked to recognize that there are vulnerable people who may potentially be inadvertently harmed by legislation.

That solemn responsibility that we undertook makes us look at those particular conditions and say, yes, there are many people who would like us to go further. Having said that, I don't think one can argue that on any of these issues there is a broad-based international consensus as to how one can adequately protect vulnerable people on any of those issues. You may disagree with me on that, but in drafting the legislation it was our understanding that we needed to be sure that we had adequate safeguards in place that would protect vulnerable people.

The piece of legislation that we landed with is something that I believe is the right approach for us as Canadians. I believe that it allows us to be able to respect that personal autonomy but to be sure that we thoughtfully consider the ramifications and make sure that no vulnerable person's life will come to an end without adequate protection.

Senator Plett: I'm going to ask a question that I asked your colleague the Minister of Justice earlier. I'll ask two questions. I'll ask them immediately so I can get both in.

Nurse practitioners who are independent of one another can assess whether a patient meets the criteria and can ultimately administer the lethal substance, and yet nurse practitioners are unable to prescribe narcotics in certain parts of our country.

So I'm in the hospital and I am in excruciating pain and I want a nurse to prescribe morphine to me for my pain. She's not allowed to. But then I change my mind and I say, "If you can't give me morphine, then kill me." She's allowed to do that. I can't square that box that she can't give me a painkiller, but she can kill me.

I would like you to answer that, and please don't give me the answer that your colleague gave me that we'll leave this up to the provinces. This is federal legislation that we have here.

The other question I have -- and I am at least in part in agreement with Senator Joyal that we have a problem here with the mature minors, but I take the opposite approach that he does. I understand the department is undertaking studies in a number of areas, one of which would explore the possibility of extending this right to mature minors.

So here we are considering allowing a person who can't buy a bottle of beer or who can't vote or who can't go to war for me, but they can choose, again, to have somebody help them die. We would have had 11 deaths in Attawapiskat a few months ago had that part of this bill been in effect.

Can you assure me, minister, that the government will make sure that doctors are not allowed to take the lives of children and that people who can't administer a painkiller to me, that we will not allow them to help me take my life?

Ms. Philpott: Thank you for your very important questions.

On the matter of nurses, perhaps I can clarify for you that again it varies somewhat with provincial regulations, but, in fact, nurses can prescribe painkillers under directives. There is a concept that happens in the practice of medicine where there is a certain scope of practice that nurses, nurse practitioners and other health care providers can work in under ordinary circumstances.

Senator Plett: In all jurisdictions?

Ms. Philpott: I can get clarification from my officials, but as far as I know, each jurisdiction will lay out for itself, province by province, these are the regulations under which nurses function in our province. There are colleges that itemize that, the same as there are scopes of practice that are itemized for other practitioners.

Nurses may also respond to directives from a physician. So I may have a nurse who doesn't normally, for instance, have within her normal scope of practice to do a urinalysis, but I, as a doctor, could say to my nurse, "I give you a directive that if a patient walks in here, even though they don't see me and I think they have a bladder infection, you can do an urinalysis."

What I'm saying to you in here is that your argument was how can this nurse help to assist in dying when he or she may not be able to prescribe painkillers? So I'm telling you that that nurse, under directives, could potentially provide a painkiller. Hopefully that responds to that specific argument.

Senator Plett: It responds to it, but it doesn't answer it; I'm sorry. She can do it under directive in one area and in another she can do it on her own.

Ms. Philpott: Let me respond to your second question. I think what your second question illustrates so beautifully is the diversity of opinion on some of these challenging issues. I hear you. I hear your anxieties around the matter of mature minors and the matter, in the case of Attawapiskat, not of mature minors but of people suffering from mental illness. Those are some of the very reasons why we wanted to be very sure that those particular matters had more study, again, for the matter of protecting the vulnerable.

Having said that, I will tell you that there are, as you can tell from your colleagues around the table, people that would say to you that if a 17-year-old is dying from cancer and is suffering intolerable pain, what's the difference between a 17-year-old and an 18-year-old?

I think this is a conversation where we need to be fundamentally open to understanding the perspectives of people that think very differently. We need to acknowledge that none of these answers are easy. That's the very reason why, on these very delicate matters, we've decided that we don't have enough information to make an adequate decision. We believe this bill needs to be passed through the appropriate stages by the June 6 deadline that the Supreme Court has given to us. I think it would be a very serious problem for us, as a country, if there is not a legislative framework in place by that time. So what we have decided to do on those matters where you can see the obvious challenges is say let's study those more; let's make sure we make the right decisions.

Senator Batters: With respect to your example that you just gave to Senator Plett regarding a 17-year-old suffering from terminal cancer, there is no terminal illness requirement in your government's bill, minister. I would just point that out to you to start.

I want to focus on the issue of psychological suffering. You practised as a family practitioner for many years. You would have seen, then, in all the time that you practised, that psychological illness, while very serious -- I don't deny that -- is treatable, it's not terminal, and there is more complex decision making involved.

Given that, you indicated in your opening remarks to the House of Commons committee -- and you made very similar, perhaps the same remarks, to us today -- the proposed legislation also does not permit eligibility solely on the basis of suffering from mental illness. There is no denying that mental illness can cause profound suffering. However, illnesses such as chronic depression, cognitive disorders and schizophrenia raise particular concerns with respect to informed decision making.

Given that, I'm wondering why you didn't include additional safeguards for people who are suffering psychologically. It is included in your bill. The only place that it is indicated that it's not eligible for assisted suicide on its own is in the preamble, but you don't require a psychiatric assessment; you don't require a more significant wait period. I understand the Mental Health Commission of Canada suggested a three-month wait period. Here you have a maximum of two weeks. And you would allow two nurse practitioners, not even one doctor, to both provide the approval, assess somebody's competency and administer it.

Ms. Philpott: Thank you for the question. It's Mental Health Week, so a good time for us to be talking about mental illness.

You pointed to one of the reasons why it would be challenging, and that's the matter that I raised in my speaking remarks in terms of the capacity to give informed consent as one of the challenges there. But in terms of how we protect people who are suffering from mental illness alone, as opposed to a physical illness which is the reason for their request, I think you will find that the best way that is protected in this legislation is in the section that defines grievous and irremediable medical conditions and speaks to the fact that natural death has become reasonably foreseeable.

For the people who are suffering from schizophrenia, depression, anxiety, et cetera, natural death is not a reasonable foreseeable outcome. As you've said, those are not incurable conditions in large part and there are treatments available for those. It was the assessment of our team as we gave instructions for drafting the bill that the matter of reasonable foreseeability of death would exclude people suffering from mental illness alone.

Senator Batters: As your colleague indicated a little earlier, everybody's death is reasonably foreseeable, to some extent. I want to just focus then on the particular aspect of somebody who is suffering with a very serious physical illness that also has a mental illness.

Why didn't you include additional safeguards for those types of people to make sure that they are properly consenting to this? As you've acknowledged, there is more complex decision-making involved for those people. Why is there nothing additional rather than simply getting all of these approvals and assessments of competency from two nurse practitioners?

Ms. Philpott: That matter is covered in terms of the requirement that the person must give informed consent. The matter of informed consent is something that health care practitioners are quite comfortable with. In fact, every decision made in the process of shared decision-making requires that a person have the capacity to give consent. We recognize that there will be people suffering from medical conditions, and it will be the medical condition for which they would ask for assistance in dying. But if they have, for instance, a psychosis and were out of touch with reality on that basis, they would not be deemed capable of receiving informed consent.

(French follows - **Le sénateur Boisvenu:** Bonjour, madame la ministre.

(après anglais – Ms Philpott cont : ...capable of receiving informed conscent.)

Le sénateur Boisvenu : Bonjour, madame la ministre. Bienvenue. Comme je l'ai dit à votre collègue il y a quelques minutes, nous sommes à l'étude d'un projet de loi qui veut gérer une situation très compliquée et complexe. Tout le monde est de bonne foi pour faire en sorte que ce projet de loi soit le meilleur possible. Le projet de loi impose beaucoup de restrictions ou du moins beaucoup d'encadrements aux professionnels de la santé et aux médecins qui devront gérer tout ce processus de mettre fin à la vie d'un individu, que ce soit un patient ou une autre personne. Au Québec, le comportement fautif sur le plan professionnel relève du Collège des médecins beaucoup plus que la justice à moins d'un acte criminel commis. Nous retrouvons dans ce projet de loi un article qui m'a surpris. L'article 241 b) a été ajouté au Code criminel qui va obliger le médecin qui prescrit une substance qui mettrait fin à la vie d'une personne l'obligation d'informer le pharmacien sur l'usage de la substance. J'essaie de comprendre pourquoi ceci a été mis dans ce projet de loi qui est venu modifier le Code criminel et qui oblige un professionnel qui traite avec un autre professionnel de donner la raison de l'usage d'une subsistance.

(anglais suit – Ms Philpott cont : You're wondering why ...)

(Following French by Senator Boivenu: ... la raison de l'usage d'une subsistance.)

Ms. Philpott: You are wondering why there is a requirement.

(French follows - **Le sénateur Boisvenu :** Pourquoi il y a une obligation du médecin ...)

(après anglais – Ms Philpott cont : ... there is a requirement.)

Le sénateur Boisvenu : Pourquoi il y a une obligation du médecin à informer le pharmacien que la substance qu'il va prescrire va servir à mettre fin à la vie d'un patient?

(anglais suit – Ms Philpott cont : Part of this speaks to...)

(Following French by Senator Boisvenu: ...à la vie d'un patient?)

Ms. Philpott: Part of this speaks to the monitoring that is necessary. I don't know whether you're going to be hearing from the Canadian Pharmacists Association, but there has been a strong request from them to make sure there is good action between the health care provider and the pharmacist so they understand the purpose for which the medication is being given.

Most of these medications, as you may not be aware, are generally used for other conditions. It's important for the pharmacist to understand the circumstances that they're being used often for what we would call an "offlabel purpose." It's important that the pharmacist be aware of why the medication was being given.

(French follows - **Le sénateur Boisvenu :** Si le médecin n'avisait pas. ...)

(après anglais – Mme Philpott cont : ...why the medication was being given.)

Le sénateur Boisvenu : Si le médecin n'avisait pas le pharmacien est-ce le Code criminel qui va sévir ou la corporation ou le Collège des médecins? Est-ce que ce sera une faute professionnelle ou une faute criminelle?

(anglais suit – Ms Philpott cont : I may need to double-check that with my...)

(Following French by Senator Boisvenu: ...ou une faute criminelle?)

Ms. Philpott: I may need to double-check with my officials to clarify that. My understanding is that it would be a regulatory matter as opposed to a criminal matter. It would be considered a regulatory infraction, is the consensus of the team here.

The Chair: Minister, how much time can you spend with the committee?

Ms. Philpott: I have probably 10 more minutes. I must say you have very good questions. You're stretching me.

Senator Lankin: Thank you, minister, for coming here. I appreciate the delicate and sensitive balancing act that we must all consider as we go forward with this. You've heard a few references to the fact that I've raised issues and concerns around the lack of ability to give advance directives. I'm going to come back to this discussion with you.

Just like there's a variety of scopes of practice for different health care professionals across the country and different palliative care regimes and medically necessary services access, there are also different capacity and consent-to-treatment regimes, including age of consent -- I have the scars from bringing in that legislation in Ontario -- and substitute decision-making; so a whole range of these things.

We have worked through on a provincial basis in many plasces some of these difficult issues. While I recognize that at a national level this brings an acute focus to it, it is not far from the issues that we have dealt with already in terms of health care policy -- two scenarios.

Please help me understand why one is more difficult for this bill to understand than another and why this would bring about advance directives. In the situation where someone has lost the capacity to make a decision but has given an advance directive and/or a substitute decision-maker offers an opinion without an advance directive, there are everyday situations where substances are withheld and disconnected like saline hydration drips. This bill is about administering a substance. That situation is taking away a substance.

Another situation is two patients suffering from progressive MS. They both have terrible mobile incapacities and are in excruciating pain. One of them also develops cognitive impairment and the other doesn't. One can give an advance directive and the other can't do so when it gets to that point.

I don't understand, given that we've been through many years of debate about these regimes and putting them in place, why all the same arguments are being raised. What makes the flip side of this so difficult for us to move forward and to educate people about how to deal with patients and families and all of that and provide people with the same access?

Ms. Philpott: Well, you've certainly raised some good examples of the nuance and the challenge. You've also itemized the reality of the fact that there is a difference between withholding treatment versus administering treatment; and that's in large part where the fundamental difference lies.

Just to reiterate, we looked at international examples of this. If you look with an open mind to the jurisdictions where advance directives have been in place, it's safe and fair to say that they've had mixed reviews in terms of the challenges instituted with them.

The most common challenge that you hear is the fact that it's extremely difficult when it comes to the later date and the person has written the directive that when they get to the point where they can't eat and no longer know the date and time, they want you to end their life. It's a huge burden on the health care provider who sees that person down the road and says this person meets the criteria where they said they wanted to end their life peacefully. They don't look uncomfortable and I have no way to re-affirm with them that's what they, in their current state, wish at this point in time.

Senator Lankin: It would still have to meet the other criteria.

Ms. Philpott: The other thing I would say is that by putting those committees in place to further examine these issues, we are putting those committees in place with no predetermined outcome as

to what the decision would be. At this time, between now and June 6, we do not have enough information to make that decision fairly, and we're committed to looking at those issues.

Senator Duffy: I represent Prince Edward Island, and the women in P.E.I. have for some time had concerns about access to full medical services for women. That has recently changed, and that's a good thing.

Picking up on what Senator Cowan said, have you thought about what mechanisms the federal government might have -- i.e. the Canada Health Act, cash, money -- to ensure that this service that you're proposing will be available everywhere in Canada?

Ms. Philpott: That's an excellent question. The P.E.I. example in terms of abortion is a very appropriate example in this case.

The biggest mechanism we have is the fact that the Canada Health Act requires the upholding of a number of principles, including accessibility, and the Canada Health Transfer, as you are aware, is dependent upon assuming that provinces and territories uphold the Canada Health Act and all of its provisions.

Senator Duffy: That would apply in this case?

Ms. Philpott: That would apply in this case.

The Chair: Thank you, minister. We appreciate you staying a little longer.

Ms. Philpott: It has been a pleasure to be with you. Thank you for your consideration of the legislation. I look forward to any further questions.

The Chair: Welcome back, Minister Wilson-Raybould.

Senator Eaton: I'm thrilled you're putting $3 million towards palliative care because I think that will help a lot of people, and I hope a lot will go into training, as it's a real expertise.

Can you reassure me, minister, that provincial regulations will not force health care practitioners to be forced to administer assisted death?

Ms. Wilson-Raybould: I appreciate and I imagine that there was some conversation around palliative care with Minister Philpott. One of the things in terms of the discussions that we've had far and wide across the country in the context of medical assistance in dying is the fundamental need to ensure that we have comprehensive palliative care that's available to everyone. That's a discussion that will continue to take place.

With respect to our legislation, there is nothing in our legislation that would compel a medical practitioner to perform medical assistance in dying. The jurisdiction would be within the provinces and territories.

Senator Eaton: Can you explain that to me? In other words, Ontario can't look at your legislation and say that we're going to make a difference because we're going to force people in hospitals to practice it if they do not wish to?

Ms. Wilson-Raybould: This is a discussion that Quebec has already had and Ontario is having. This is something that Minister Philpott is working closely with her counterparts in the provinces and territories on. In terms of the conscience rights of medical practitioners, that is in the jurisdiction of the provinces and territories.

I know a number of provinces have started, including Ontario, to engage in this discussion to not compel medical practitioners to perform medical assistance in dying. I don't know if the deputy has any more detailed information about what's happening within the provinces and territories, but I hope that answers your question.

Senator Eaton: It does. What you're saying is it does not compel Ontario. Ontario could still turn around tomorrow and force people to administer death and dying if they so choose, if that's what the province decided, regardless of what you've written in your legislation?

Ms. Wilson-Raybould: Well, the provinces and territories have the ability to put in the regulatory framework that they deem appropriate; having said that, the regulatory framework put in place must be Charter-compliant.

Senator White: Thanks for returning, minister. In relation to the Quebec legislation, I'm sure you've spent time looking at that legislation. They've done more research than all provinces combined on this area. In comparing the two, was there not a consideration to looking at adopting their legislation, or if not directly what they have, as close as possible? They certainly have some pieces that were missing around terminally ill and things like that.

Ms. Wilson-Raybould: As I said in my opening remarks, we certainly had the benefit of looking at all jurisdictions that have medical assistance in dying -- some nine jurisdictions -- and we certainly did look closely at what the province of Quebec has done. Their discussions and debates occurred over a substantive number of years. The debates around their legislation took place prior to the *Carter* decision. Of course, we were mindful of best practices and experience in other jurisdictions but sought to specifically respond to the factual circumstances in the *Carter* decision in drafting our particular piece of legislation. There are similarities, I think it's fair to say, but there are some differences.

Senator White: Do you think the Quebec legislation meets the *Carter* decision?

Ms. Wilson-Raybould: I have had the opportunity to speak on an ongoing basis with the Attorney General in the province of Quebec, and she indicated that they, like all jurisdictions, will be considering the legislation very closely.

Senator White: So, that means no?

The Chair: Senator Jaffer.

Senator Jaffer: All afternoon, as I've been listening to you, minister, and to Minister Philpott, one of the concerns I have had is with regard to areas of the country where there is very little medical help. You would know this very well, of course, because of the work you've done previously on reserves and in the North. How are we going to ensure that the same kind of accessibility exists for vulnerable people in those areas? For example, I understand that some places don't even have a medical practitioner or nurse practitioner. Are you making any special provisions for people in those vulnerable areas?

Ms. Wilson-Raybould: Thank you for the question. Certainly, I would imagine that my colleague, Minister Philpott, addressed her substantive mandate letter in terms of engaging with the provinces and territories in the renewal of the Health Accord and ensuring that all Canadians have the same access to health care programs and services.

You referenced vulnerable people who live in remote areas. There are specific concerns, certainly, with respect to indigenous communities. There are many measures that our government is looking at and undertaking to invest in indigenous communities in our 2016 budget. One is ensuring that we work closely, in a substantive way, with communities to ensure that we can provide the services required to address some of the root causes that create gaps in the first place. Those include poverty, housing and ensuring that we do as much as we can to provide those necessary circumstances to individuals.

Senator Jaffer: All afternoon, we've been hearing the term "reasonably foreseeable." From what I'm gathering, based on what I've heard, it's based on flexibility. How do you ensure consistency across the country? There's no definition of "foreseeability." How are we going to achieve consistency across the country?

Ms. Wilson-Raybould: That's a great question. We, as I indicated, purposefully drafted our eligibility criteria, including the four elements around grievous and irremediable, and concluded that death has become reasonably foreseeable.

When the four elements are considered in the totality of the circumstances of the individual patient, we saw fit to not put a specific timeline around what reasonably foreseeable is, but to put in place the confidence or the ability of medical practitioners to make that determination for

themselves based upon the relationship they have with the patient, their expertise and recognizing we live in an incredibly diverse country.

Patients present themselves with incredibly diverse circumstances, so it's that flexibility that we thought would be best placed in terms of medical practitioners making that determination based on what their patient presents.

Senator Plett: I asked my questions of the officials before. Unfortunately, I didn't get a very good answer, but I'll accept what they gave me and pass it on.

Senator Joyal: I'm not in the same position as Senator Plett. Thank you, senator.

Madam minister, I'd like to come back to the last "whereas" of the bill, especially the last part, wherein you state that you intend to:

> explore other situations . . . in which a person may seek access to medical assistance in dying, namely situations giving rise to requests by mature minors, advance requests and requests where mental illness is the sole underlying medical condition.

You recognize in this preamble that there are at least three other groups of people who should have access to physician-assisted dying. That's what you infer by stating their classes very specifically. In so doing, what you recognize is that those people -- everyone in those classes -- could have a right to access physician-assisted dying under section 7.

In my opinion, by not putting any deadline on recognizing their rights, you are open to challenges under section 15 of the Charter. We have heard that argument from Professor Benoît Pelletier, from the External Panel for Options for a Legislative Response, which was established by the previous government and published its report last December. Professor Pelletier is on the record specifically on this issue.

Would it not have been safer for the survival of the bill, under a challenge on this section of the preamble, to put in place a deadline as the special joint committee did in its recommendation 6 of the report? We were very conscious that we were excluding people in order to survive a challenge on the basis that the court has already recognized that right, and has already maintained the exclusion for a limited period of time for a specific objective. By making it open-ended, I think you're open to a challenge under section 15 of the *Charter* from any people who found themselves in that class.

Ms. Wilson-Raybould: Thank you for the question, senator. As I stated, and as we have explained in our explanatory paper, we took into account *Charter* considerations.

I will say that the Supreme Court of Canada decision in *Carter* did not deal with mature minors, advance directives or with persons suffering from mental illness alone as a sole eligibility criteria to seek medical assistance in dying.

What we have heard, very loudly and from many diverse perspectives, is that these are more challenging issues that need to be considered in a substantive way to get more evidence of the risks and benefits with respect to these three more controversial issues. We put it in the preamble as a reflection to indicate that we are going to be engaged in further study on these three issues. It was not put there to presuppose an answer that, ultimately, medical assistance in dying would be made available in these three particular categories, but to ensure that our commitment is strong and that we need to have further discussions around this.

I want to be very clear that the conclusion of those discussions has not been pre-determined, senator, but that the importance of these issues, and ensuring that we respect personal autonomy and substantively protect the vulnerable as much as we can, come into play when we have those discussions on those three particular issues. That's what we're committed to doing.

Senator Joyal: The court, in paragraph 127, states:

> We make no pronouncement on other situations where physician-assisted dying might be sought.

The court was quite clear. There are other cases and situations where the court will recognize that a patient has a right to physician-assisted dying, especially if they fall into one of those three categories that you mentioned, and that everyone recognizes. That's why I think this very paragraph leaves you vulnerable. You recognize it and the court has recognized it, but you don't establish any specific deadline for those people to exercise their rights under specific conditions.

We all agree that those three categories might need additional safeguards to the ones the bill contains. But by excluding them without any deadline, I think you negate them in the future without any real commitment in time to recognize those rights. The court infers they might have the right to do it.

Senator Batters: With respect to the issue of terminal illness or end of life, this is an issue that Canadians have spoken loudly and clearly on in many different polling results on the external panel that was done in the significant focus groups and polling that they did. Quebec requires that. All U.S. jurisdictions that allow assisted suicide require it. Why did your Liberal government choose not to require terminal illness and end of life?

Ms. Wilson-Raybould: The object of our legislation is to ensure that we respond, of course, to the *Carter* decision and provide medical assistance in dying to those individuals that meet the eligibility criteria, all four of the elements that are contained in terms of grievous and irremediable.

This is to provide the ability for patients that meet those criteria to have a peaceful passage into death.

Our legislation, while somewhat different from other jurisdictions, six of the nine jurisdictions look to and their legislation focuses on end of life. We have put in place the reasonably foreseeable other conditions that need to be taken into account by the medical practitioners in their totality.

There's a degree of flexibility in terms of what "reasonably foreseeable" means, but we made a conscious decision to ensure that we provide legislation and a regime that enables persons who are approaching the end of their lives to be able to make decisions about the ability to have dignity and have that peaceful passage into death.

Senator Batters: Very briefly on the issue of nurse practitioners, you indicated earlier that this for your government was an issue of access. That's why you, unlike almost everywhere, are going to allow nurse practitioners to approve a patient, allowing this, assess competency and administer it. You also said that this would be required in more remote areas, but your legislation provides no limitations on that so this could be accessed anywhere in Canada. It could be downtown Toronto.

There aren't any limitations and I wondered if that was the reason, to promote access in these specific rural or remote areas, why did you do that? Where did you get the basis of nurse practitioners? You mentioned Colombia earlier. Is that where you obtained an unusual requirement like this?

Ms. Wilson-Raybould: You're quite right, senator. The reality of the different areas of our country, individuals do not have access to physicians. We certainly recognize that the regulation of nurse practitioners and laws around nurse practitioners being able to provide medical assistance in dying is within the jurisdiction of the provinces and territories and they can legislate in that regard.

I will say that we had the opportunity to meet with the Canadian Nurses Association and have a deep appreciation for the substantive work that nurse practitioners do and the ability to engage and have substantive relationships with individuals in communities and recognize for the access reasons and the substantive regulatory requirements for that profession that would need to be in place, depending on what the provinces and territories indicate, should be in place. That's their decision with respect to nurse practitioners being able to provide medical assistance in dying in those regions.

Senator Batters: Do you mean that some provinces could allow nurse practitioners to do this and others could say no, nurse practitioners cannot do it, even though it's in your bill that it can be either doctors or nurse practitioners?

Ms. Wilson-Raybould: That's correct. It's up to the provinces and territories to determine if nurse practitioners will be able to provide medical assistance in dying.

(French follows - Senator Boisvenu - Madame la ministre, ce projet de loi une fois adopté s'adressera sans doute à des citoyens pour lesquels nous avons . . .)

(après anglais – Mme Wilson-Raybould cont : ...provide medical assistance in dying.)

Le sénateur Boisvenu : Madame la ministre, ce projet de loi une fois adopté s'adressera sans doute à des citoyens pour lesquels nous avons beaucoup de respect. Je pense à nos militaires et nos anciens combattants qui reviennent souvent des missions avec des blessures très graves.

Pouvez-vous m'expliquer pourquoi ce projet de loi va venir modifier la Loi sur les pensions et ce qui est la Loi sur les mesures de réinsertion des militaires et vétérans canadiens? En quoi cette loi vient modifier ces régimes?

William Pentney, sous-ministre de la Justice et sous-procureur général du Canada (Ministère de la Justice Canada): Comme vous le savez, il y a les populations fédérales, comme les anciens combattants et nous ne voulons pas limiter l'accès à une aide médical à mourir à d'autres canadiens. Les changements de la Loi sur les anciens combattants et les pensions, par exemple, sont liés à cet aspect. Nous ne voulons pas limiter un accès accessible aux autres Canadiens, il faut changer le régime afin d'assurer que les familles des anciens combattants ne sont pas —

(anglais suit – M. Pentney cont. : I have to say it in English.)

(Following French - Mr. Pentney continuing - il faut changer le régime afin d'assurer que les familles des anciens combattants ne sont pas —)

I have to say it in English, I'm sorry. They're not disadvantaged by virtue of the veteran having had access to a medical aid that's available to other Canadians. It's really a consequential amendment.

Provinces and territories will have to look at other laws that they may consider changing as consequential amendments to ensure that surviving family members and others aren't disadvantaged by virtue of now if the law passes, the individual having taken advantage of something that the law makes legal.

(French follows - Senator Boisvenu - Est-ce que les provinces auront le même exercice à faire par rapport à certains types de métiers comme . . .)

(après anglais – M. Pentney cont. :...that the law makes legal.)

Le sénateur Boisvenu : Est-ce que les provinces auront le même exercice à faire par rapport à certains types de métiers comme les policiers, par exemple?

M. Pentney : Oui, ils doivent considérer les situations des autres. Nous sommes uniques dans le sens que nous gérons un régime médical pour une population.

(anglais suit – M Pentney cont. : I'm not aware of any province...)

(Following French - Mr. Pentney - uniques dans le sens que nous gérons un régime médical pour une population.)

I'm not aware of any province that runs a policemen's medical system. Police have access to a general system but for federal inmates and for certain federal populations, including veterans as you know, in that sense we have a parallel regime.

Senator Sinclair: My question has to do with the consequences of doing nothing; the consequences, I suppose, of this bill not passing or something like it not passing by the deadline.

As I read the legislation that has been pronounced by the Supreme Court -- and, in effect, it has created a law now in its decision that you are trying to change through this bill. By virtue of paragraph 147, it has declared -- and correct me if I'm wrong and I invite you to respond -- as I read paragraph 147, the Supreme Court has declared that any physician who assists a person to die will not be guilty of an offence or be subject to prosecution provided that it is a competent adult person who clearly gives consent to the termination of life, who has a grievous and irremediable medical condition -- and "irremediable" is defined as impossible to cure, as I have read that word -- that is causing enduring suffering to that person that is intolerable to the individual in the circumstances of his or her condition.

So the *Carter* decision seems to me to say that if those conditions apply a physician cannot be prosecuted for assisting that person to die, in the absence of this or any other legislation; Am I right?

Mr. Pentney: Yes.

Senator Sinclair: Thank you.

The Chair: Minister, if you can take one more question quickly. You want to respond to that? I thought you had, sorry.

Ms. Wilson-Raybould: Can I speak to that and potentially speak to the other question posed by Senator Joyal?

The Chair: Go ahead.

Ms. Wilson-Raybould: You're quite right, senator, and it's very nice to see you around this table.

You're quite right in your interpretation. The *Carter* decision will apply if for some reason there is no federal legislation in place as of June 6. There is substantive concern, however, that there will be uncertainty in terms of medical practitioners and the application of what the *Carter* decision actually means. There will be uncertainty and uncertainty of the ability of patients to access medical assistance in dying because of that uncertainty.

In addition, there will be the uncertainty for the medical practitioners in applying but also uncertainty with respect to safeguards that would be in place. There would be no safeguards in place after June 6. The applications for exemptions, which individuals are allowed to apply for right now to Superior Court in their jurisdiction, would no longer be in place.

With respect to the constitutionality of this legislation, I'm very pleased that we were able to put out our explanatory paper. It spoke to the Charter considerations with respect to this piece of legislation. While we have spoken to the Charter considerations, considerations do not necessarily mean that our piece of legislation is unconstitutional. I am confident that our piece of legislation meets the *Carter* decision. It would withstand constitutional rigour. We performing our responsibility as parliamentarians to ensure we develop a complex regulatory framework for Canada at this time. That's what we've done, taken into account the diversity of opinions and sought to balance that fundamental need for balancing of rights, personal autonomy in this case, and protection of the vulnerable.

Senator Lankin: I have been focusing on the issue of advance directives. From the perspective of the health care professionals, this legislation creates an exemption to protect from criminal prosecution.

In a circumstance where a health professional is respecting an advance directive of a patient, brain cancer, DNR, I don't want heroic interventions but I want to be kept comfortable, I want to be pain free. Your colleague and I talked about the difference between administering a substance and withdrawing a substance in a DNR kind of circumstance.

In those circumstances, if a physician provides morphine, painkillers to depress respiration which leads to death, can you assure me they would not be prosecuted because they're doing that under the conditions of an advance directive? This happens all the time.

Ms. Wilson-Raybould: In terms of what currently is being undertaken by medical practitioners in terms of --

Senator Lankin: With the prohibition of giving an advance directive for medically assisted dying. In circumstances that occur all the time right now under advance directives, would that health care professional now be at risk of being prosecuted because they're acting under an advance directive, which is prohibited by the legislation and the exemption to criminal prosecution?

Ms. Wilson-Raybould: As you know, this occurs in hospitals and with patients right across the country. I would imagine that with legislation introduced on medical assistance in dying, the doctor would be at less risk.

We're going to, as you know, study advance directives and have some consideration around these issues certainly in terms of do not resuscitate orders or in situations of palliative sedation that you speak about. That is accommodating a patient in terms of the end of their life or making the best situation in that regard. What we need to discuss and study further is actually making and initiating the end of life by virtue of medical assistance in dying in terms of the advance directives.

It's an incredibly difficult issue. You've acknowledged the personal experiences you and many other Canadians have had. We hear these discussions when we go to town halls. These are not easy issues. This is a transformative shift in the discussions. We have benefited from those discussions. Canadians are engaged and involved, and this is not going to be the end of the discussion. So I look forward to the continuation.

The Chair: Thank you, minister. We very much appreciate your attendance and response to senators' questions.

We have about one hour remaining, so we've asked officials from both Health and Justice to come forward. You can pose questions to whichever ministry you wish to.

Senator Jaffer: Thank you very much for sitting so long and accommodating us.

I want to go to an area about third parties. I'm very interested. I understand it can be medical practitioners, nurse practitioners and exemptions for persons aiding practitioners. The bill says: "No person is a party. . . if they do anything for the purpose of aiding a medical practitioner or nurse practitioner. . . ."

I'm curious as to who you were thinking of in those circumstances, and then I have other questions.

Ms. Klineberg: Thank you, senator. It could be a variety of different people who might play a role in assisting the medical practitioner or the nurse practitioner in the various steps leading up to the provision of medical assistance and dying. For instance, a social worker or a psychologist may be asked to consult with the patient or their family to help to determine if the patient is making a voluntary choice, if they're being coerced by a family member, for instance.

We had also considered the possibility that there might be a staff lawyer, at a large hospital, who might be asked to review all of the paperwork, in advance of proceeding, to determine that everything was in order.

Under a technical legal analysis, each one of those actions, when the party knows that it's in furtherance of the provision of medical assistance and dying, could render those people parties to what would otherwise be a homicide or the offence of assisting a person to die by suicide. In large measure, I think what was in mind were various other sorts of health care providers, but, because it's possible that there might be other types of professionals involved, the language was made applicable to anyone. But they have to know they're helping a physician or nurse practitioner to provide it in accordance with the legal regime.

Senator Jaffer: One the things that really concerns me in this bill is informed consent. I have tried to find a way to describe it, but I haven't yet found one.

I see two tracks. I see that one track is the voluntary euthanasia, where, almost at the very end, you have to be able to consent, and then there is the assisted suicide, where you go to your medical practitioner. You get the prescription. You go to the pharmacist. You get the substance, and then you put it in your fridge and wait until you've decided to end your life.

At that time, when you decide to end your life, there is no consent, right? It's just whenever you're ready. Do I read this correctly?

Ms. Klineberg: In the sense that there's no medical practitioner or nurse practitioner obtaining your consent again.

Senator Jaffer: So your consent is at the time you get the prescription, which could be two years before.

Ms. Klineberg: Yes.

Senator Jaffer: There are technical issues, like the prescription running six months. It could be two years before about, right? So the informed consent has been two years before, and then there is nothing else in place.

Ms. Klineberg: Yes. The primary reason for that has to do with the limits of the criminal law. From a health law perspective, we would note that the provinces and the territories might be able to place protocols or parameters around medical assistance in dying when it occurs in the form of physician-assisted suicide. They might be able to put in place protocols that require the person to self-administer in the presence of someone as a matter of health law, but, as a matter of criminal law, the private act of a person to take action to end their own life is not something that the criminal law prohibits or gets involved in. The criminal law is really interested in that situation when there's the involvement of a third person.

It's largely a function of the limits of the criminal law.

I will just add a little bit of context on this particular point. The provincial-territorial expert advisory group recommended that both modalities of euthanasia and physician- or medically assisted suicide be made available, and they recommended that, in the case of medically assisted suicide, it be made available, including in the unsupervised manner that the legislation provides for. On their view, that really maximizes the autonomy of the individual to be able to choose exactly when the time is right and to have the comfort of knowing that the medication is present with them, should their circumstances change in some way.

I would also note that it's a model that's based on the U.S. state law approach. There are presently four U.S. states that permit only physician-assisted suicide, and it's based on this model where the patient can obtain the substance and take it home.

Those are some additional considerations that might better help you understand that particular approach.

Senator White: Thanks again for the responses.

I must have missed part of this, because two years before -- a lot of things can happen in 24 months. The mental health of the patient is no longer relevant, really, if they have it sitting in their fridge or cupboard like a loaded gun. New treatments might have come forward. There are no checks or balances in place to ensure us that things that might have changed are actually looked at. Is that correct?

Donald Piragoff, Senior Assistant Deputy Minister, Policy Sector, Department of Justice Canada: Thank you, Senator White. Senator Jaffer's reference was a hypothetical.

In order to get the prescription filled, you have to meet all the criteria. You must, first, have an incurable disease. You have to be suffering intolerably. The doctor has to have made a diagnosis that your medical condition and all the circumstances have changed and that death is "reasonably foreseeable."

So you cannot get a prescription in advance that "maybe someday two years from now or five years from now." You cannot get a prescription to do an advance directive.

You have to be qualified; to get the prescription you have to qualify for the doctor to actually inject you, but instead of injecting you, you decide that you would rather die in bed at home with your family around me instead of at the hospital, or "I'd like to go up to the cottage and die at the cottage, because that's really peaceful." The doctor is not going to go two hours up to the cottage to watch you die.

That's why. It provides greater autonomy if you give the patient the ability to take the medication on their own terms, at their time, so it's a peaceful death. As the minister said, we're giving Canadians the right to a peaceful death when they're in the process of dying.

So the person has to be in the process or on the path of dying already. You can't get it in advance of meeting the criteria.

Senator Joyal: I would like to come back to proposed paragraph 241.2(2)*(d)*, the one that provides the new criteria:

> their natural death has become reasonably foreseeable, taking into account all of their medical circumstances, without a prognosis necessarily having been made as to the specific length of time that they have remaining.

You are probably aware of the two cases reported by CBC in Quebec whereby a person who was suffering from a disease -- an irremediable condition -- was denied by the doctor physician assistance in dying, because the person was not too close to death under the Quebec law. The person, in order to have access to physician assistance in dying, had to go on a hunger strike and deprive herself of all water to come to the point where the doctor came to the conclusion that the person was dying under intolerable suffering, because if you deprive yourself of water, all the muscles contract and you suffer. So then the doctor prescribed the drug for them.

The problem I have with this new paragraph is that it will perpetuate that situation. It seems to me that it is totally inhumane and contrary to what the court has decided in *Carter* under the right of section 7. So you can't push people to put themselves into intolerable conditions to be able to have access to medical assistance in dying. That's certainly not what *Carter* had in mind when the judgment was made public.

I hope we'll have the opportunity, as witnesses here -- I have suggested the names of the persons who are involved in that case in Quebec. It was widely reported. There were two such cases.

So it seems to me that what you have put there -- additional criteria -- will lead up to horrendous situations, and that's been public and reported in all details.

It seems to me before we accept that criteria, we have to evaluate the impact of it in relation to the practitioner who has to pronounce on the state of the "dying path" of the person, while, in fact, the main criterion is the suffering. That's the main criterion of *Carter*.

By adding this, you will be confirming the kind of situation that I have just described to you.

Simon Kennedy, Deputy Minister, Health Canada: Senator, perhaps I can speak to the principles behind the way the bill was constructed. Then Justice can speak to some of the legal issues.

The ministers here and before the House of Commons earlier in the week noted that, in pulling together the legislation, there were, in effect, three different approaches that could be taken. One

would be to have a kind of arbitrary length of time during which death was seen to be something that would happen. So they have this in some U.S. states where they say you have to have a prognosis that you will be dead within six months.

The concern was that there is a great deal of evidence that it's very hard to make those kinds of determinations. And if you do, to some extent it's arbitrary, because you will have people who will live slightly longer and who might not otherwise be eligible.

That was one door.

Another door would be to not have this notion of death being "reasonably foreseeable," so you'd have something that is much broader than what is in the current bill. The ministers noted that the concern there is that it really brings into sharp focus all of the safeguard concerns for the vulnerable -- that you have a heightened concern around vulnerable people if you don't have this criterion that death is "reasonably foreseeable" in the circumstances.

The government has tried here to reconcile the competing interests, which is to recognize the concerns that you have raised about people who are in terrible pain and suffering but also the concerns around protecting vulnerable populations from exposure to early death, who might not wish that or who might be in situations where they might be coerced.

You see in the legislation an attempt to reconcile those, where death has to be reasonably foreseeable but the circumstances of the case are left to a medical professional to make that judgment. So looking at the totality of the circumstances and knowing that death is a reasonable and foreseeable outcome -- it's really left to the medical professional to make the judgment. That was a very deliberate choice.

This is not really a legislation that's designed so that people who are in terrible pain can make a decision to end their lives. This is a bill about people who are actually in that circumstance but on a path toward death -- so that they can have a peaceful exit. That was a deliberate policy choice that the government made.

I think Justice has determined that they believe this is compliant with the Charter. Maybe we could speak a bit more to the legality.

The Chair: You can expand on that in second round.

Senator Batters: Before the Minister of Health came, we were right in the middle of Ms. Klineberg providing her answer to what Senator Jaffer and Senator White touched upon in this particular portion.

Ms. Klineberg, when you were indicating that answer earlier, you were saying the physician-assisted suicide section where someone potentially receives a prescription two or three

years before; and Mr. Piragoff, earlier you indicated that that was a hypothetical. But it was a hypothetical that we posed at the briefing yesterday, and your official indicated that was a valid hypothetical.

I guess what I'd pose to you is somebody in their household, or some unscrupulous person, unfortunately, may be potentially influencing that person or even doing something worse than that, and you'd never know because there aren't any additional safeguards required in that circumstance.

Earlier, when you were responding to one of my colleagues here, Ms. Klineberg, you referred to U.S. state law for these sorts of things. But, of course, U.S. state law does require terminal illness in those few jurisdictions that have this, and also end of life. It probably wouldn't be a situation of that lengthy of a time frame. I'm wondering if you could provide a little more information than you provided earlier, Ms. Klineberg.

Ms. Klineberg: I agree with the comments of Mr. Piragoff. Just to clarify: Before the prescription is provided, all of the eligibility requirements must be met. So this is a person who has been found by two health care practitioners who are qualified to make the determination that they are on a path towards the end of their lives. How long that might take, these are hypothetical questions that we're not in a position to answer.

In terms of unscrupulous individuals pressuring or taking advantage of a person in those situations, there absolutely remain criminal prohibitions, which are very serious in nature, which would prohibit that sort of conduct. Any person who counsels or influences or tries to encourage or incite a person to take the drugs themselves would be committing an offence, for which there's no exemption provided. That offence is punishable by 14 years in prison. Any person who takes the drugs and somehow attempts to administer them directly to the person would be in fact causally responsible for their death and could be charged for culpable homicide, specifically murder. That's what the criminal law can do. The criminal law can prohibit these forms of conduct.

Senator Batters: I agree with that. It's just that hopefully in this regime we would know about those sorts of things.

I need to move on briefly to Mr. Pentney. When you earlier appeared with the justice minister, you both indicated that Canadian provinces could disallow nurse practitioners from providing assisted suicide, despite the fact that your bill provides either doctors or nurse practitioners. I wonder if you could point to me which particular provision of the bill provides that. Having a quick look myself after you gave that answer, I'm wondering if you're just referring to the definition of "nurse practitioner."

Mr. Pentney: That's exactly the definition. It means a registered nurse who, under the laws of a province --

Senator Batters: Is entitled to practise as a nurse practitioner. It doesn't limit it.

Mr. Pentney: At page 7, subsection (7):

> Medical assistance in dying must be provided with reasonable knowledge, care and skill and in accordance with any applicable provincial laws, rules or standards.

Senator Batters: Those are the only two parts?

Mr. Pentney: Yes.

Senator Batters: In a lot of ways, it seems this particular bill is putting things off on the provinces or regulatory bodies to take significant steps, and we could have quite a patchwork of situations across the country. Are you concerned about that?

Mr. Pentney: As the ministers have made clear, the government's intention by exercising the criminal law power, which is a federal power and applies from coast to coast to coast, is to establish a baseline or a floor. But recognizing that Canada is unique in the world as a federal state where we are exercising a criminal law power in respect of a medical procedure where, as the Supreme Court of Canada has recognized in a series of decisions, it is an area of federal and provincial jurisdiction, the government's commitment is to try to ensure a degree of uniformity that recognizes that the different provinces and territories have a role to play with respect to the regulation of medical practitioners and the professional conduct, expectations, standards, norms and guidelines.

We've seen a number of provinces starting to exercise that jurisdiction. Quebec led the way. Other jurisdictions are now out with guidelines, some courts, with respect to this interim period of exercise guidelines. The government would seek to ensure a degree of uniformity, and we are working actively with provincial and territorial officials to implement this.

But the Supreme Court of Canada has also made clear that in respect of the federal power, there are limits. The assisted human reproduction decision from the Supreme Court of Canada clearly prescribed limits on how far the federal government can go in prescribing especially professional practice.

We are unique in the world in trying to work this through, but the government's commitment is to try to achieve a reasonable degree of uniformity, recognizing that different provinces now treat nurse practitioners somewhat differently, have some differences. Those things will continue.

Senator McIntyre: Thank you. I have two questions, one for Justice and one for Health. First, Justice.

The question has to do with the relationship between the Quebec law versus the proposed legislation. The proposed legislation calls for both assisted suicide and voluntary euthanasia.

Quebec's health law permits only legal euthanasia. Then we have a mixture of terms. Quebec uses "end of life" and the proposed legislation uses the words "reasonably foreseeable."

Can both laws coexist, assuming the proposed legislation becomes law, or will Quebec have to amend its legislation in order to meet the federal standards?

Mr. Pentney: Maybe I will start and others can add. We are working very closely with provincial and territorial officials to look at, if the federal law passes, the steps they may wish to take, including with Quebec. You're correct to note that there are differences between the federal and provincial law. But, if you like, there's a general prohibition. This bill proposes to open up a box underneath that general criminal law prohibition and say that within that box, activity will be legal if it corresponds to the following requirements.

What Quebec has done is to partially fill that box. The federal law would not require them to fill it.

The *Carter* decision opens up a new set of questions; and Quebec, I'm sure, is looking carefully at the *Carter* decision and its implications for their law, either under the federal or the Quebec charter. But it would be for Quebec to decide, and we are in active discussions with them about the ways in which these laws will align and those discussions will carry on.

Another province could decide to only, if you like, partially occupy the box as well, in terms of the scope of medical practice that they allow. That's effectively what Quebec has done.

Senator McIntyre: The *Carter* decision seemed to reassure Quebec as far as their legislation is concerned.

Mr. Pentney: I would leave it to Quebec legislatures and Quebec officials to describe that.

Senator McIntyre: My next question has to do with health, particularly for individuals with mental health issues.

The bill does not permit medical aid in dying for individuals with psychiatric conditions, yet psychological suffering would meet the test for eligibility. What I hear is that people with a mental illness would be eligible for medical assistance in dying as long as they have met all of the eligibility criteria. I find this a little confusing between people suffering from psychiatric conditions as opposed to people suffering from psychological conditions. People with psychiatric conditions are out of the picture, yet people with psychological conditions would fit in as long as they meet all the other criteria. Could you clarify that for me, please?

Mr. Kennedy: I think the legislation talks about suffering, and suffering as a result of medical circumstances. Psychological suffering can be part of the suffering that gets considered by the medical practitioner in making the assessment, but it can't be the sole criterion. In other words -- I

think the minister talked about this earlier -- psychological suffering, mental illness, cannot be the sole criterion. It can be one of the factors that are looked at in totality.

So you may have somebody who, as an example, has some sort of illness, and they have a concurrent psychological issue -- they're depressed or they have some kind of psychological pain, but it's concurrent with another illness which is actually quite serious and will perhaps lead to their death in a reasonably foreseeable period of time. If you've satisfied all the conditions in the legislation, the mere fact that you have this underlying psychological condition is not going to exclude you. However, if a psychological condition is the sole basis, that will not be sufficient in the legislation to enable you to get access to medical assistance in dying.

Senator McIntyre: Even if you have a mental illness, you're not disqualified?

Mr. Kennedy: That is exactly right. The ministers have talked about this a little bit. There is the issue of the ability to give consent. You have to be able to freely indicate this is something you wish to have. You must confirm it.

Senator McIntyre: You can have a mental illness, but as long as you meet the other criteria, you're fine?

Mr. Kennedy: Exactly, senator.

Senator Plett: Mr. Piragoff, you talked about hypothetical situations a little earlier. I've been looking at some of the clauses here about reasons. There are situations where a pharmacist can simply give somebody a drug if it's been prescribed by a physician. You stated, however, the doctor may not want to go out of his way to drive two hours to a cottage. A person willing to administer something to kill a person might want to drive two hours.

I want you to walk me through a situation where someone goes to a pharmacist, purchases this drug, how long they can have that drug, and what the process is of that person administering the drug. Certainly you're pointing to Ms. Klineberg, and that's fine. From start to finish, where does a person go?

I'm concerned that a doctor would allow someone with psychological suffering to drive to a cottage to kill him or herself. There is a fear of who they might kill on their way out to this cottage where they go to kill themselves. Can you walk me through that process?

Ms. Klineberg: The process begins long before the person would arrive at the pharmacy with the prescription. It begins with the person making a written request after they've been informed by a medical practitioner or nurse practitioner that their death has become reasonably foreseeable. They make a written request in the presence of two independent witnesses. They're assessed by a second medical practitioner or nurse practitioner. The two practitioners determine that they meet

all of the eligibility requirements. The person might then obtain from the physician or a nurse practitioner a prescription that would then be filled by the pharmacist.

There are limits to how far the criminal law can go in terms of regulating the private acts of an individual to end their own life, but that doesn't mean there aren't steps that the provincial and territorial governments or medical colleges might take to establish protocols around how this might transpire.

Senator Plett: It keeps on getting passed off to the provinces and territories when we are dealing with federal legislation. You're drafting a bill here that we're supposed to pass. Everything I've been asking is somehow not the federal government's responsibility; it's the province's responsibility.

You are telling me, though, that a person who has psychological suffering can run around with a drug in his back pocket for two years and then decide to do whatever he wants with that drug. You trust someone with psychological suffering with this drug?

Mr. Piragoff: If the doctor has concerns about the competency of the individual, the doctor doesn't have to prescribe the drug. Nothing forces the doctor to prescribe the drug.

Senator Plett: Except the person asking.

Mr. Piragoff: But it's the doctor's decision.

Mr. Pentney: What Ms. Klineberg walked through is the process and the system, the individual meeting the eligibility criteria set out in the legislation. There is illness, disability or disease causing suffering or intolerable to the person, significant decline in capabilities where death has become reasonably foreseeable. They make a written request, followed by two medical physician witnesses and a 15-day reflection period. Beyond that, the only way this can happen in Quebec is the doctor must administer and remain with the person until their death.

Carter treated both the situation where the doctor is administering and the other situation where the individual is administering as following within the possible constitutional requirements. What the legislation would allow, then, is when a person got to that stage, if it's their wish, and they meet all of the eligibility criteria, a physician may administer the drugs. The law is opening up the possibility that the individual may then have possession of the drugs and decide the circumstances under which they would take the drugs.

These are highly prescribed drugs. Provinces and territories already control access to and use of those drugs. This legislation proposes to recognize the autonomy of that individual to self-administer. To that extent, that's what the law is proposing.

(French follows -- Senator Boisvenu: Ma question et tres generale.)

(après anglais – Mr. Pentney... that's what the law is proposing.)

Le sénateur Boisvenu : Ma question est très générale. La santé relève des provinces en termes d'administration, un peu comme l'administration de la justice. Nous avons le Code criminel qui vient baliser les sentences et le contexte dans lequel le juge peut donner ces sentences, et le droit des criminels, il y a très peu de droits pour les victimes comme on le sait.

Le sénateur Joyal : Au moins soyez fier de la Charte que vous avez proposée.

Le sénateur Boisvenu : Pourquoi la philosophie qui sous-tendait ce projet de loi n'était pas plutôt une ouverture aux provinces par délégation? Un peu comme on le fait en justice? Quel était l'objectif de baliser de façon très restrictive l'usage de ce moyen qui est offert aux professionnels de la santé? Quel était l'objectif de restreindre plutôt que de laisser une porte plus ouverte aux provinces afin qu'elles puissent, à partir de leur vécu culturel et de leur spécificité, baliser elles-mêmes le travail des professionnels.

M. Kennedy : Je vais commencer par répondre à la question et laisser certains détails à mes collègues du ministère de la Justice. Nous avons eu bien des discussions avec nos collègues dans les provinces, dans la préparation de cette loi et dans l'étude du sujet après la décision de la Cour suprême. Ils ont dit qu'ils étaient préoccupés face à la possibilité d'avoir de grandes différences entre les différentes juridictions. Globalement, les provinces ont indiqué un intérêt à avoir une certaine similarité ou une certaine approche semblable à travers le pays. Nous étions très préoccupés dans la préparation de la loi, par les préoccupations des provinces et nous voulions éviter la possibilité qu'il y ait de grandes différences entre les juridictions et le tourisme médical et les problèmes qui pourraient s'en découler.

Le sénateur Boisvenu : Cette opposition n'a pas dû venir du Québec.

M. Kennedy : On n'a pas vraiment eu de crainte du Québec par rapport à cette loi.

Le sénateur Boisvenu : La loi québécoise est moins restrictive que la loi fédérale.

M. Kennedy : L'idée ici, c'est le Code criminel. On va ouvrir une fenêtre et encadrer dans un certain sens, mais c'est vraiment aux provinces, dans le trou qui a été créé dans le Code criminel de déterminer exactement comment ça fonctionne, mais cette fenêtre a été créée dans le but d'avoir une similitude, une certaine approche commune partout au pays. Et lorsque nous parlons de drogues et de processus pour les médecins et tout cela, c'est vraiment de juridiction provinciale. Lorsqu'on parle des infirmières praticiennes, c'est aux provinces de déterminer exactement comment ça fonctionne, je ne sais pas si cela répond à votre question.

(anglais suit – La sénatrice Batters : **Ms. Klineberg, in talking about the 15-day waiting. . .)

(Following French in 1740 – Ms. Kennedy - . . .pas si cela répond à votre question.)

Senator Batters: **Ms. Klineberg, in talking about the 15-day waiting period, it also indicates that unless that person's death or loss of capacity is imminent, so although the legislation indicates a 15-day waiting period, that could be reduced to immediately providing that service; is that correct? That assessment of when that death or loss of capacity was imminent could be made by two nurse practitioners; correct?

Ms. Klineberg: Yes, that's correct. I would just clarify that none of that would mean that the other procedural safeguards could be avoided. There's still the requirement for the written requests and the two independent witnesses. All of the other requirements are still present. It's just the 15-day wait period that can be reduced.

Senator Batters: It could be reduced down to immediately?

Ms. Klineberg: Yes, in the discretion of the medical practitioners.

Senator Joyal: My first question is about the fifth "whereas," which says "Whereas suicide is a significant public health issue." Have you paid consideration to the fact that a person who is diagnosed with Alzheimer's, where the person is aware that his or her condition will deteriorate, if that person doesn't have access to an advanced directive, that person could put an end to his or her life immediately or in the short term?

There are many examples of people being diagnosed with Alzheimer's that can envisage the point whereby their personal condition would be so deteriorated that their quality of life would be meaningless. By not giving them the possibility to express advanced consent, as Senator Lankin mentioned, you are pushing those people to suicide.

Mr. Pentney: The government recognizes there are many circumstances of suffering and many different situations. As the ministers and the legislation have been clear, this is starting down a significant shift in the Canadian law, and the government is firmly committed, as the preamble notes, to continuing to examine other related aspects, including advanced directive.

It's not at all to deny that there are many circumstances and many dimensions of human suffering. This bill is not about resolving all those situations. It is about addressing a particular form of particular relevance given the *Carter* decision, but it represents a choice for Parliament to make in terms of where to start. In recognizing that advanced directives bring with them a whole series of questions and complications that will require further assessment and study.

Senator Joyal: By having the criteria at 241**(2)(d)**, "their natural death has become reasonably foreseeable . . . " and linking that to the qualification of incurable, is it not a medical decision? It says, ". . . taking into account all of their medical circumstances . . . "

As I understand it, there has to be a complete evaluation of the patient's file, and by introducing that criteria, are you not contradicting the fact that by opening the physician-assisted dying to nurse

practitioners that this is a medical act that the doctors will want to exercise themselves and that nurse practitioners would not be allowed to do?

Mr. Pentney: I'm not sure how to respond to the question. First, yes, this will be a medical assessment. It will be an assessment by a medical practitioner. Second, who that medical practitioner is will depend on the nature and scope of practice that's otherwise authorized, I think. Maybe Mr. Kennedy can add to that.

Mr. Kennedy: The government, in pulling this together, was mindful that nurse practitioners in some jurisdictions do have broad physician-like authority. In Quebec, for example, they practise under the supervision of a physician, but in other provinces -- it varies by province -- they can assess, diagnose, prescribe, treat patients for certain conditions. Depending on the authority that's been granted by their professional body or by the province, they can provide a scope of practice that looks like some of the services that physicians provide.

The other concern that was motivating the government, which we think is an important concern, is the issue of access. We have a lot of remote and small communities in Canada, and I think there were real concerns about the ability of patients to be able to get access to this service if you didn't allow for a slightly broader range of medical practitioners to be able to provide this kind of service.

Senator Joyal: My final question is in relation to life insurance contracts, to which you refer to in the eighth "whereas" on top of page 2, whereby you say insurance is a provincial domain, but if a province doesn't legislate in order to recognize the legality of physician-assisted dying, it would be a way to prevent some patients from exercising their rights. How do you reconcile that?

Mr. Pentney: There have been discussions with the life and health insurance industry, and I'm sure evidence will come forward from that industry looking at their aspect. In a sense, it's not a matter of reconciling it because it's simply not within federal jurisdiction to regulate it. The "whereas," in a sense, is an expression of a hope and a wish and a desire, but like many areas in this wonderful federation, it's not for the federal government to prescribe.

Senator McIntyre: The bill contains 11 clauses. I draw your attention to the last clause, number 11, which basically states that clauses 4 and 5 relating to the filing of information will come into force on a date fixed by order-in-council, and then other clauses come into force by Royal Assent.

Why would clauses 4 and 5 not come into force upon Royal Assent? I take it it's to allow time required to set up a system for data collection. Would I be correct?

Mr. Kennedy: That's right, senator. In the interim period the idea is we will develop a protocol with the provinces and territories to gather data in the interim, but we want to have a regulatory regime. We're talking to them about what that would look like.

Senator McIntyre: So you need this time required between the two?

Mr. Kennedy: That's right.

Senator Plett: I want to take one more stab at trying to get an answer where we don't pass it over to the provinces. I should have done this with the ministers, rather than with the officials, but I will anyway.

There are indeed a lot of issues that you have rightfully said are under the auspices of the provinces, and I accept that. Let me talk again about the conscientious objection. In paragraph 132 of the *Carter* decision, the Supreme Court expressly recognizes the need for balance between the Charter rights of patients and the Charter rights of physicians and allied health professionals; for example, conscientious objection.

What harm would there be in the federal government to strike a law that deals with conscientious objection, instead of just saying that we will pass that off to the provinces? Are they afraid of dealing with it? Because they have the right; it would not be against the Constitution for the federal government to deal with that issue.

Mr. Pentney: Our interpretation is that it would go beyond the scope of federal jurisdiction to prescribe a scope of practice or medical requirement. The converse would be to have a clause in the law that would give either false hope or false guidance that ultimately would not be legally effective.

I would underline that whether or not there's a clause in the Criminal Code, doctors, nurses, physicians, individuals all carry the conscience rights that the Charter guarantees them and that will neither be supplemented nor adjusted by a clause in the criminal law. There is a highly technical explanation for why we cannot go so far as to prescribe practice by medical professionals in what they can and must do in respect to meeting their professional or legal obligations. That's clearly, we think, within the scope of provincial jurisdiction, but there is nothing in the bill that compels any medical practitioner to do this.

Senator Plett: Well, I tried. Thank you.

Senator Batters: I wanted to follow-up on something that Senator Joyal asked about the life insurance aspect. Isn't this creating two classes of suicide victims?

We would have life insurance recipients or beneficiaries whose loved one died by suicide that was medically assisted, and they would, potentially, be entitled to benefits; and the other class would be made up of people who die by suicide because of mental illness, and they wouldn't be entitled. Given that statistics continually show that 90 per cent of Canadians who die by suicide suffer from mental illness, how do you justify that?

Mr. Pentney: Thank you for the question, senator. I would say that, as both ministers noted in their earlier conversations, this issue has sparked a national conversation across a range of topics going far beyond the particulars of the Criminal Code. We would note the Canadian Life and Health Insurance Association is in active discussion with the provinces and territories, and we will see that discussion carry on.

What has been recognized here is the creation of an exception to the criminal law and, therefore, something which is otherwise legal if it meets the criteria. The government is expressing the hope that, when someone exercises the rights that the government is giving them in accordance with the law and obtains medical assistance in dying, the life and health insurance situation of that person would not be adversely affected, recognizing that the federal government has no jurisdiction there.

The tragic situations of individuals who take their lives in other circumstances that you are talking about is a conversation that we would hope Canadians would carry on with, and that the life and health insurance association, provinces, territories and other interested parties would continue to explore whether or not further adjustments are required in that legislation.

Senator Lankin: I guess this last question is directed to the officials and asking them to take it forward to their ministers.

I think there is a great thirst from Canadians for this bill to satisfy a lot of things, and I think we, as a group of senators, share in that thirst. Some of the things I accept completely, and as a former provincial politician, I would have moved immediately to take the federal government to court if they were trying to legislate the scope of practice of health care practitioners.

Having said that, I believe that your responses to us indicate the importance for continued discussion, the delicacy of the issues and, perhaps, polarized views. There are many reasons that might bring us to this point of not providing all Canadians with access to these provisions of the legislation, and that will undergo further discussion.

Today, it was made clear that the five-year review of the bill covers the entire bill, monitoring compliance and a whole range of things. The provisions that will be studied are a separate process of study not yet determined, and discussions with province have yet to take place.

I hope you would take back from me, as one senator, a desire to hear from the ministers what that process is going to look like and some timeline for that. I think that people are not prepared to wait, and that they do not want to have to take their individual cases to court and go through that. If people have a line of sight to a reasonable time frame for addressing some of these very important issues and a process that will include them in those discussions, that might give comfort to some of us. I don't know, but without that it's a very hard stretch for some of us to support the lack of some provisions in this bill.

Mr. Pentney: Thank you for the question. On behalf of Mr. Kennedy and myself, I'm sure we're absolutely prepared to take those issues back. Obviously, ministers will be looking at the transcripts of this proceeding and would thank you for the nature and quality of the questions. This is an important dialogue for Canada and you're making an important contribution. Thank you.

The Chair: We have a few more minutes left, and I want to take advantage of this opportunity while I have officials here.

Senator Jaffer: I want to go back to the advance directive. I am really concerned about that, because, provincially, we go so far in saying, "Do not take extraordinary measures." Senator Lankin has said that if you do not do many things, that's fine, but when it comes to getting help, you were talking about having no advance directive. Someone who is sick but wants to live as long as they can to enjoy their children and grandchildren might come to the conclusion that if they do that, they have nowhere to turn.

Mr. Pentney, you were very generous with your comments to us, but we are hearing from people who are saying that this is not good enough. We have waited long enough. People have, in this case, so much pain, and don't have access to courts. We all know who gets access to courts.

Further to what Senator Lankin was saying, we do need answers. We are also being held accountable by people who say, "Don't accept this, because the June 6 deadline is not a deadline to die on. You must do more so we die with dignity."

I want to urge you to look at other countries that have advance directives. I am not satisfied with the answers you have given.

Ms. Klineberg: If I can, I would like to provide a little bit of information about the laws of other countries. There are, at present, really only two jurisdictions in the world that permit advance directives for medical assistance in dying in the case where the patient becomes incompetent.

Actually, let me clarify: There are four countries, but two of them -- Belgium and Luxembourg -- only allow the advance directive to be carried out when the person has been rendered irreversibly unconscious. That would not be the case for patients with dementia and Alzheimer's.

The latest country to permit it is Colombia which, just last year, implemented a resolution that sets out the process. We have no information from Colombia, yet, whether this is happening or under what circumstances.

The only country that does permit it, and where there is some data available from studies that have been done, is the Netherlands. I believe, as the Minister of Health mentioned when she was here a few moments ago, that the studies and evidence of how that is actually carried out in the Netherlands suggests very strongly that, even where a valid request has been made, physicians on

the whole are unwilling to abide by it. Many families also change their minds when that situation comes around.

Internationally, there is really no evidence of what this actually looks like. There is not one country that has good solid data about the willingness of physicians to administer a substance to cause the death of a person who is conscious but incapable of expressing their wishes. This is one of the considerations, I think, that has motivated the decision and caused the desire for more study.

I would also note, peripherally, that one of the pieces of evidence that was critical to the trial judge's finding that the law was unconstitutional was the fact that there was evidence from Canadian physicians of their willingness to assist patients like Ms. Taylor. We have no evidence of the willingness of Canadian physicians to provide this service to patients who have become incompetent to express their wishes but remain conscious.

Again, in our discussions with the provinces and territories, we have asked them to query their medical professionals, but there is some concern about the possibility that requests might be made and then not carried out.

These are some of the additional considerations that I think play into the decision the government has made.

Mr. Pentney: I would encourage the committee to look at the report of the external panel that was appointed and, if there is an opportunity, to call some of the members. They certainly did consult nationally and internationally and they can speak to the evidence they gathered during the course of their process.

Senator Plett: I just want to echo, at least in part, Senator Jaffer's comments, although probably for different reasons.

I agree with what one of our colleagues said at the break. There has probably never been a bill that so many people have disagreed with for so many different reasons. I also believe that June 6 is not a hill that we need to die on, but I believe the bill has gone too far. Those would be my reasons.

Let's make sure that we do have a bill that the majority of Canadians can be in favour of. Senator Lankin said that Canadians do want something, but the jury is still out on whether they want more or less than what we have. Thank you.

The Chair: Thank you, all. It has been a long day for all of you. We appreciate that, your patience and contributions to our deliberations.

Meeting adjourned.

(The committee adjourned.)

Reynolds, Craig

From: Skogan, Stephanie J.
Sent: May 10, 2016 11:58 AM
To: Cerretti, Liliana
Subject: FW: MLI Paper on FPIC (April 2016)

Were you forwarded a copy?

From: Reynolds, Craig
Sent: 2016-Apr-29 12:26 PM
To: Stevenson, Ron; McGunigal, Sharon; Skogan, Stephanie J.
Cc: Accette, Steve; Reynolds, Craig
Subject: MLI Paper on FPIC (April 2016)

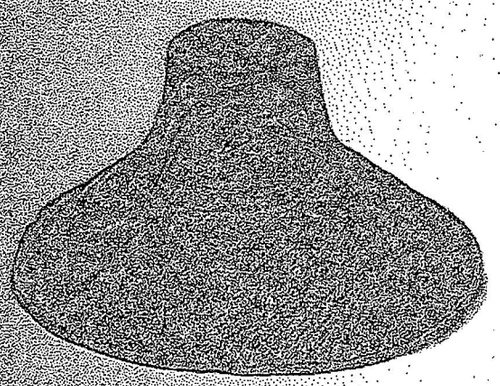
FYI. April 2016 MacDonald Laurier Institute paper by Ken Coates & Braine Favel entitled:

Understanding FPIC- From assertion and assumption on 'free, prior and informed consent' to a new model for Indigenous engagement on resource development

MLINumber9-FPI...

Thanks
Craig

9 Aboriginal Canada and the Natural Resource Economy Series

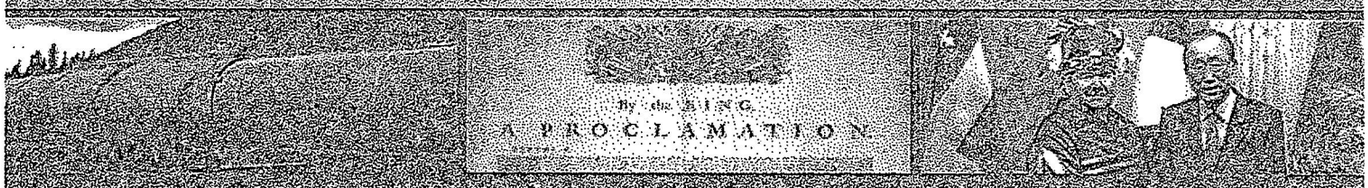


UNDERSTANDING FPIC

From assertion and assumption on 'free, prior and informed consent' to a new model for Indigenous engagement on resource development

KEN S. COATES AND BLAINE FAVEL

APRIL 2016



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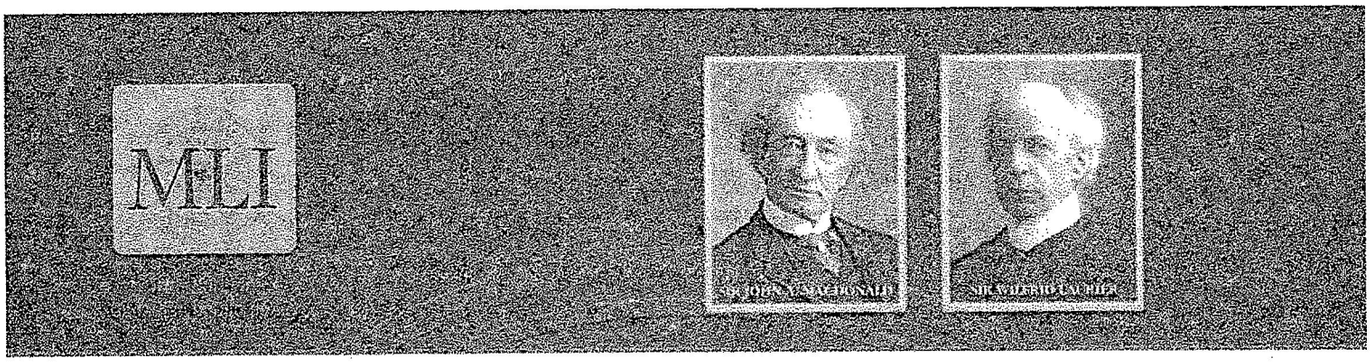

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PREFACE

The year 2013 was the 250th anniversary of the Royal Proclamation of 1763. The Royal Proclamation is widely regarded as having been one of the cardinal steps in the relationship between Aboriginals and non-Aboriginals in British North America – what eventually became Canada.

A quarter of a millennium later it is our judgment that that relationship has often not been carried out in the hopeful and respectful spirit envisaged by the Royal Proclamation. The result has been that the status of many Aboriginal people in Canada remains a stain on the national conscience. But it is also the case that we face a new set of circumstances in Aboriginal/non-Aboriginal relations. Indigenous peoples in Canada have, as a result of decades of political, legal, and constitutional activism, acquired unprecedented power and authority. Nowhere is this truer than in the area of natural resources.

This emerging authority coincides with the rise of the demand for Canadian natural resources, a demand driven by the increasing integration of the developing world with the global economy, including the massive urbanisation of many developing countries. Their demand for natural resources to fuel their rise is creating unprecedented economic opportunities for countries like Canada that enjoy a significant natural resource endowment.

The Aboriginal Canada and the Natural Resource Economy project seeks to attract the attention of policy makers, Aboriginal Canadians, community leaders, opinion leaders, and others to some of the policy challenges that must be overcome if Canadians, Aboriginal and non-Aboriginal alike, are to realise the full value of the potential of the natural resource economy. This project originated in a meeting called by then CEO of the Assembly of First Nations, Richard Jock, with the Macdonald-Laurier Institute. Mr. Jock threw out a challenge to MLI to help the Aboriginal community, as well as other Canadians, to think through how to make the natural resource economy work in the interests of all. We welcome and acknowledge the tremendous support that has been forthcoming from the AFN, other Aboriginal organisations and leaders, charitable foundations, natural resource companies, and others in support of this project.

PROJECT CO-LEADERS

BRIAN LEE CROWLEY
MANAGING DIRECTOR
MACDONALD-LAURIER INSTITUTE

KEN S. COATES
SENIOR FELLOW
MACDONALD-LAURIER INSTITUTE

CANADA RESEARCH CHAIR IN REGIONAL INNOVATION
JOHNSON-SHOYAMA GRADUATE SCHOOL OF PUBLIC POLICY
UNIVERSITY OF SASKATCHEWAN

Image courtesy United Nations

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Cover image: Haida spruce root twined hat courtesy Sotheby's Canada.

EXECUTIVE SUMMARY

The Trudeau government's commitment to implement the United Nations *Declaration on the Rights of Indigenous Peoples* (UNDRIP) has generated considerable policy and political debate. What is the intersection between international and domestic law? Is UNDRIP compatible with Canada's laws and policies? What does it mean for Indigenous communities? Does it represent progress or create new uncertainty? These are the types of questions with which policy-makers and Canadians – including Indigenous peoples – are now grappling.

No aspect of the declaration has received more attention than the concept of "free, prior, and informed consent" (FPIC) and its implications for resource development. Some argue that it is tantamount to an Indigenous veto over resource projects. One Indigenous leader in a recent CBC radio interview, for instance, stated plainly that "First Nations have the right to free, informed, and prior consent. That right is guaranteed in law and in effect that is a veto." Others contest that UNDRIP currently has no legal standing in Canada and that in any event, FPIC, by and large, maintains the existing expectations with respect to consultation and accommodation. In the past, FPIC has been embraced by Indigenous peoples, treated with ambivalence by government, and with concern by industry. Some resource firms have seen FPIC as another hurdle for approval of resource development just as real progress was being made in adopting the "duty to consult and accommodate."

Too often assertion and assumption, rather than research and analysis, defined the ongoing debate about "free, prior, and informed consent." This paper seeks to provide dispassionate analysis on the subject for policy-makers, Indigenous leaders, businesses, and Canadians.

Too often assertion and assumption, rather than research and analysis, defined the ongoing debate.

The paper explores the meaning of "free, prior, and informed consent" and how it interacts with current Canadian law and practice. It also sets out recommendations on how the Trudeau government can fulfill its promise to incorporate FPIC into the Canadian system without disrupting the slow yet steady progress that is being made to establish partnerships between Indigenous communities and companies on resource development. There is not a strong case that FPIC currently applies to resource development in Canada, or that it would bestow a veto on resource projects, but the new federal government's embrace of the concept creates a welcome opportunity to further clarify the terms for Indigenous support for resource projects on their traditional lands. It would be a mistake to simply attempt to adopt FPIC as a new standard. The potential for further confusion and disruption in the resource economy is significant.

What is needed is a made-in-Canada implementation plan for FPIC that furthers understanding of the conditions for partnerships with Indigenous communities. There needs to be an Indigenous-driven process to clearly establish the standards for consultation and engagement on resource projects that conforms to existing Canadian laws and practices. This paper considers the roles and responsibilities of Indigenous communities, governments, and natural resource companies, and sets out clear recommendations for each of these parties:

1. The Government of Canada and national Indigenous organizations, including the Assembly of First Nations, Inuit Tapiriit Kanatami, Métis National Council, and the Congress of Aboriginal Peoples, should seek to develop a common declaration that articulates support for the spirit and intent underpinning the *UN Declaration on the Rights of Indigenous Peoples* as it relates to resource development.

2. The Government of Canada and the provinces and the territories – working in full cooperation with Indigenous organizations and peoples – have to define the manner in which they will determine when and how the "national interest" intersects the interests of a specific Indigenous community or group with regard to resource development.

3. The federal government, provinces, territories, and national Indigenous organizations could seek to negotiate a national framework or regional ones that clarify existing case law on Indigenous rights regarding resource development and the role for Indigenous participation.

Indigenous peoples could, in effect, define what "free, prior, and informed consent" means for them.

4. Canada requires a decision-making and conflict resolution system that is culturally sensitive, timely, and fair. The establishment of a non-judicial arbitration body, staffed by commissioners acceptable to all parties and with a mandate to resolve disputes, would go a long way toward providing a transparent mechanism that respects Indigenous cultures and political processes, and spells out the relative rights and responsibilities of Indigenous peoples, governments, and corporations.

5. Indigenous communities could contribute to resolving the uncertainty with respect to UNDRIP, and in turn FPIC, by issuing a declaration that sets out Indigenous requirements and expectations for participation in resource development. Indigenous peoples could, in effect, define what "free, prior, and informed consent" means for them in the form of a framework for resource development and Indigenous approval.

The paper's ultimate goal is to help inform the federal government as it determines how to fulfill its election commitment to implement UNDRIP, including codifying "free, prior, and informed consent." Implementing FPIC can be an opportunity to improve the Canadian model of government, Indigenous, and business engagement, or it can impose new obstacles to progress and development. This paper is a blueprint for progress.

SOMMAIRE

L'engagement du gouvernement Trudeau à mettre en œuvre la *Déclaration sur les droits des peuples autochtones* (DNUDPA) a donné lieu à de vastes débats politiques et à une réflexion profonde sur les politiques. Comment les lois nationales et internationales se recoupent-elles? La déclaration est-elle en accord avec les lois et les politiques canadiennes? Quelles sont ses répercussions sur les collectivités autochtones? Est-elle un pas de plus en avant ou engendre-t-elle de l'incertitude? Il s'agit du genre de questions auxquelles sont maintenant confrontés les décideurs et les Canadiens, notamment les peuples autochtones.

Aucun aspect de la déclaration n'a reçu autant d'attention que la notion et les répercussions du « consentement préalable, donné librement et en connaissance de cause » (CPLCC) sur la mise en valeur des ressources. Selon certains, il revient à accorder un droit de veto aux peuples autochtones sur les projets de ressources. Ainsi, dans une récente entrevue à CBC Radio, un chef autochtone a franchement déclaré que « les Premières Nations ont droit à un consentement préalable, donné librement et en connaissance de cause. Ce droit est garanti par la loi et est effectivement un veto accordé aux peuples autochtones ». D'autres expliquent que la DNUDPA n'a pas de statut juridique

au Canada présentement et qu'en tout état de cause, le CPLCC confirme essentiellement les attentes actuelles en matière de consultation et d'accommodement. Historiquement, le CPLCC a suscité l'enthousiasme des peuples autochtones, a été envisagé avec ambivalence par les gouvernements et a soulevé des préoccupations dans l'industrie. Certaines entreprises de ressources le voient comme un nouvel obstacle à l'approbation des projets de ressources au moment même où elles accomplissent des progrès réels en souscrivant à « l'obligation de consulter et d'accommoder ».

Trop souvent, les affirmations et les suppositions, plutôt que la recherche et l'analyse, caractérisent le débat en cours sur le « consentement préalable, donné librement et en connaissance de cause ». La présente étude vise à présenter une analyse objective de la question aux décideurs, aux chefs autochtones, aux entreprises et aux citoyens canadiens.

L'étude explore la notion de « consentement préalable, donné librement et en connaissance de cause » et la façon dont elle interagit avec les lois et les pratiques canadiennes actuelles. Elle présente également des recommandations sur la manière dont le gouvernement Trudeau peut remplir sa promesse d'intégrer le CPLCC dans le système canadien sans perturber les progrès encore lents, mais constants, accomplis pour construire des partenariats entre les collectivités autochtones et les entreprises pour la mise en valeur des ressources. Il n'y a pas de preuves solides démontrant que le CPLCC s'applique à la mise en valeur des ressources au Canada actuellement ou qu'il suppose un droit de veto sur les projets, mais l'ouverture du nouveau gouvernement fédéral en la matière crée une occasion de clarifier les termes en vertu desquels les Autochtones pourront accorder leur soutien aux projets sur leurs terres traditionnelles. Ce serait une erreur que de simplement chercher à adopter le CPLCC à titre de nouvelle norme. Cela risquerait grandement de créer davantage de confusion et de perturber l'économie des ressources.

La présente étude se veut un plan directeur au service du progrès.

Ce dont on a besoin c'est d'un plan de mise en œuvre typiquement « canadien » pour le CPLCC, qui délimite clairement les modalités des partenariats avec les communautés autochtones. Il faut un processus axé sur les Autochtones afin d'établir des normes claires de consultation et de participation dans les projets de ressources, et cela, dans le respect des lois et des pratiques canadiennes courantes. Dans cette étude, les rôles et les responsabilités des collectivités autochtones, des gouvernements et des sociétés de ressources naturelles sont pris en compte pour adresser des recommandations claires à toutes les parties :

1. Le gouvernement du Canada et les organisations autochtones nationales, dont l'Assemblée des Premières Nations, l'*Inuit Tapiriit Kanatami*, le Ralliement national des Métis et le Congrès des peuples autochtones, devraient tenter d'élaborer en commun une déclaration qui décrit l'esprit et l'intention à la base de la *Déclaration des Nations Unies sur les droits des peuples autochtones* en ce qui a trait à la mise en valeur des ressources.

2. Le gouvernement du Canada ainsi que les provinces et les territoires – travaillant en totale collaboration avec les organisations et les peuples autochtones – devraient définir la manière de déterminer quand et comment les « intérêts nationaux » se croisent avec sur les intérêts d'une collectivité ou d'un groupe autochtone particulier en ce qui concerne la mise en valeur des ressources.

3. Le gouvernement fédéral, les provinces, les territoires et les organisations autochtones nationales pourraient chercher à négocier un cadre à l'échelle du pays ou des régions à l'intérieur duquel seraient clarifiées la jurisprudence existante à l'égard des droits autochtones et la participation de ces derniers à la mise en valeur des ressources.

4. Le Canada a besoin d'un processus de prise de décision et de résolution des conflits adapté à la culture, rapide et équitable. La création d'un organe d'arbitrage non judiciaire formé de commissaires acceptés par toutes les parties, et dont le mandat serait de résoudre les différends, permettrait d'offrir un mécanisme transparent pour trancher sur les questions de droit et de responsabilité revenant aux peuples autochtones, aux gouvernements et aux sociétés, et ce, dans le respect des cultures et des processus politiques autochtones.

5. Les collectivités autochtones pourraient apporter leur aide pour résoudre l'incertitude à l'égard de la DNUDPA et du CPLCC en rendant publique une déclaration précisant leurs exigences et leurs attentes en matière de participation autochtone à la mise en valeur des ressources. Les peuples autochtones pourraient en effet définir, de leur point de vue, la notion de « consentement préalable, donné librement et en connaissance de cause » sous la forme d'un cadre d'action pour la mise en valeur des ressources sous réserve de leur assentiment.

L'étude a pour objectif ultime d'éclairer le gouvernement fédéral au moment d'évaluer la manière de remplir sa promesse électorale portant sur la mise en œuvre de la DNUDPA, y compris la codification de la notion de « consentement préalable, donné librement et en connaissance de cause ». La mise en œuvre du CPLCC peut être l'occasion d'améliorer le modèle canadien de participation réunissant les gouvernements, les peuples autochtones et les entreprises, mais peut aussi opposer de nouveaux obstacles au progrès et au développement. La présente étude se veut un plan directeur au service du progrès.

INTRODUCTION

The natural resource industry has become contested ground in Canada. Indigenous groups and their supporters have mounted protests against hydroelectric projects, pipelines, and mines, which has given Canadians a growing sense that the resource sector is a political battlefield. At the same time, and garnering much less attention, hundreds of Indigenous communities have signed agreements with mining and forestry companies, finding common ground in search of economic opportunity. Across the country, uncertainty surrounds the roles and responsibilities of governments and companies to engage, consult, and accommodate local communities as part of the resource project approval process. The rhetoric can become heated. Passions can be ignited. Facts can be obscured.

The natural resource industry has become contested ground in Canada.

The Trudeau government's commitment to implement the United Nations *Declaration on the Rights of Indigenous Peoples* (UNDRIP), and in turn its clauses about "free, prior, and informed consent" (FPIC), has the potential to further complicate an already complicated situation and could slow resource development dramatically. But handled properly, the government's recognition of UNDRIP could usher in a new era of cooperation and partnership with Indigenous peoples.

Recent comments in a CBC radio interview by Pamela Palmater, Chair in Indigenous Governance at Ryerson University and well-known commentator on Aboriginal issues, provide some insight into the level of this debate. In the interview she asserts that First Nations communities can effectively exercise a veto over projects:

> We have... a legal right to free and informed and prior consent... First Nations aren't asking for anything. First Nations have the right to free, informed and prior consent. That right is guaranteed in law and in effect that is a veto. First Nations say no on their territory, that means no. And Prime Minister Trudeau said very clearly that no means no when talking to First Nations. His job is to try to find ways in which to go forward with a yes to make sure that... the environment is protected and the economy goes forward, but not one at the expense of the other. (Enright 2016)

Dr. Palmater's observations help illustrate that "free, prior, and informed consent" has become a priority for Indigenous leaders and their communities. But they are also indicative of considerable assumption and misunderstanding. The tendency to equate UNDRIP to Canadian law, and FPIC as tantamount to a veto over resource projects, effectively confuses the issue and risks producing more tension than progress.

Assertion and assumption, rather than debate and analysis, has defined the national conversation about "free, prior, and informed consent." This paper seeks to bring dispassionate policy-oriented analysis to the debate. It explores the meaning of "free, prior, and informed consent," explains how FPIC interacts with current Canadian law and practices, and sets out recommendations on how the Trudeau government can fulfill its promise to incorporate FPIC into the Canadian system without disrupting the existing and still evolving collaborative processes on resource development between Indigenous communities and companies.

This paper argues for a "made-in-Canada" implementation plan for FPIC that furthers understanding of the conditions for partnerships with Indigenous communities. It recommends an Indigenous-driven process to establish the standards for consultation and engagement on resource projects that conforms to existing Canadian laws and practices and meets the goals and values of UNDRIP. We consider the roles and responsibilities of Indigenous communities, governments, and natural resource companies, and set out clear recommendations for each of these parties. The paper's ultimate goal is to inform the federal government as it determines how to fulfill its election commitment to implement UNDRIP, including codifying "free, prior, and informed consent" (Liberal Party 2015), while providing greater clarity for the resource sector.

As the events of the last decade have shown, Canada faces two stark choices.

As the events of the last decade have shown, Canada faces two stark choices about how best to proceed in this vital area. In the first approach, Indigenous peoples could continue to use Canadian legal processes, supplemented by the still unclear legal authority of UNDRIP, to pursue their Aboriginal and treaty rights to gain a greater presence in the resource sector. This approach has worked well, albeit incrementally and at considerable cost, over the past 40 years, producing outcomes for Indigenous peoples that would not otherwise have been gained. In other words, the country could anticipate decades of continuing legal battles with the attending uncertainty for governments and resource companies.

The second approach, the one advocated here, is that the Government of Canada, Indigenous communities, and the resource sector, could take the combination of new government policy, existing Supreme Court judgments, the directives of UNDRIP and FPIC, and the commercial realities of the resource sector, to fashion a new policy and administrative framework for managing relations in the field.

Uncertainty carries enormous risks for all participants, including Indigenous peoples. For 40 years, Canada has limped, unevenly, toward real and sustained partnership with Indigenous peoples over

resource development. Aboriginal Canadians have found support in the legal system and have used the recognition of their rights to make real progress, seen in the hundreds of resource collaborations across the country.

The Trudeau government has indicated a desire to make substantial strides in the sector and to develop new and more collaborative relationships with Indigenous peoples. The potential exists, in an area of pressing national importance, to launch a process of the co-production of policy with Indigenous peoples, one that respects commercial realities and that re-enforces Canada's stature as a country that welcomes respectful, environmentally sound, and economically sustainable resource development.

RESOURCE DEVELOPMENT IN CANADIAN PRACTICE AND LAW

There has been considerable progress in recent years, driven primarily by Indigenous-instigated court decisions and the willingness of resource companies to adjust to new legal and political realities. As late as the 1980s, Aboriginal people in Canada had few recognized legal rights relating to resource development, and only modest recognition of Aboriginal rights in general. Three major Supreme Court decisions – *Taku* and *Haida* in 2004 and the ruling on the *Mikisew Cree* case the following year – established the principle of "duty to consult and accommodate," which required governments (and companies) to inform and negotiate with Indigenous communities before starting development projects, and required appropriate "compensation" for disruptions of land, livelihoods, and community well-being (Newman 2014).

Starting in 2004, resource firms struggled to understand, accept, and implement their new responsibilities.

Starting in 2004, resource firms struggled to understand, accept, and implement their new responsibilities. Part of the problem was that the requirements and expectations were imprecise. Another was that companies were not used to engaging with Indigenous peoples and some were clumsy, ineffectual, and even disrespectful.

Gradually, firms – particularly those with long-term assets and established relations with Indigenous communities – began to adapt. Large companies, such as Cameco and Suncor, took proactive approaches and accommodated the expectations of the First Nations and Métis communities in their fields of operation. They signed substantial collaboration agreements across northern Saskatchewan (in the case of Cameco) and established extensive business and employment relationships, among other engagements, with Indigenous communities near the Alberta oil sands. Others, including some of the junior mining companies, lacked the resources and time to make a substantial change in direction, and continued to press for quick agreements with Indigenous communities.

But it is difficult not to recognize the progress that has occurred. There are now more than 400 impact and benefit agreements between Indigenous communities and the mining sector alone, and many hundreds more in the forestry industry. A new legal capacity specializing in the duty to consult and accommodate requirements has been built. More than 250 Aboriginal Economic Development

Corporations have been established and are now making major regional and community investments. Resource companies are exhibiting an increased commitment to corporate social responsibility in their interactions with Indigenous communities. And on top of that are the employment and investment gains Indigenous peoples have made (Coates and Speer 2015).

Indigenous collaboration with resource firms is considerably more extensive than many Canadians believe. The partnership agreements with New Gold (New Afton Mine, in the BC Interior) resulted in strong participation by the Stk'emlupsemc of the Secwepemc Nation. Similarly, the Nisga'a signed an agreement in 2014 with Avanti Mining to permit the opening of the Kitsault Molybdenum Mine Project in the Northwest corner of the province. On an even larger scale, Vale's extensive agreements and collaborations with the Innu Nation and the Nunatsiavut Government regarding the Voisey's Bay nickel mine include a variety of important Indigenous-directed elements. (Crowley and Coates, 2013; Coates, 2015; Coates, Finnegan Hall and Lindsay, 2015; Newman, 2014).

There are now more than 400 impact and benefit agreements between Indigenous communities and the mining sector alone.

Consultations and agreements have not always worked out smoothly, of course, as the tensions surrounding the Ring of Fire development in northern Ontario attest (Younglai and Marotte 2015). Consider also the continuing struggles of the Attawapiskat First Nation despite its agreements regarding the nearby DeBeers diamond mines, and the ongoing passionate debates about the Northern Gateway and other pipelines. As well, numerous Indigenous communities have been caught in the current energy sector downturn and been harmed economically by the cancellation of projects. Well-negotiated settlements have collapsed in the final stages when the companies determined that the projects had become uneconomical. But it is clear that progress is being made (Crowley and Coates 2014).

There were bumps along the road, but resource firms, Indigenous peoples, and governments generally followed the advice offered by legal scholar Dwight Newman, who argued:

> despite the fact that it is a legal doctrine, the duty to consult needs to be approached in less technical ways. By its nature, the duty to consult as a legal doctrine has to be relatively technical. It is engaged or triggered relatively easily by governments' administrative decisions that have the potential to have adverse effects on Aboriginal or treaty rights. But there are then many complexities on what it might mean in particular circumstances as a minimal legal requirement. In many ways, the history of how the duty to consult has worked suggests that those who attempt to draw upon the spirit of the duty to consult may well attain better outcomes than those who attempt to follow the letter of the law. (Newman 2014)

There were other changes as well. After years of resistance, governments provided additional benefits, including resource revenue sharing in some provinces and territories (and included within modern treaties). There were improvements in general consultations with Indigenous peoples on resource developments and other matters. Driven by Indigenous legal interventions, the country had moved significantly toward more inclusive resource planning, more equitable arrangements for Aboriginal communities, and significantly better relations between Indigenous peoples, resource companies, and government agencies. In this context, the Canadian endorsement of UNDRIP and, as a consequence, free, prior and informed consent, was an intervention into a process that, while far from ideal, had produced significant economic outcomes for Aboriginal people and the country at large.

The new arrangements have empowered Indigenous peoples substantially, but they did not grant a veto over resource development. The courts consistently recognized the right of the governments

to govern – to manage affairs in the national interest – and acknowledged that the duty to consult and accommodate did not grant Indigenous communities the final say. In a series of court cases, the courts ruled, variously, that "The duty does not require than an agreement be reached, nor does it give Aboriginal peoples a veto," (*Behn v. Moulton Contracting Ltd.* 2013); "The First Nation does not have a veto over the approval process. No such substantive right is found in the treaty or in the general law, constitutional or otherwise," (*Beckman vs. Little Salmon/Carmacks First Nation* 2010); and "The consultation process does not give Aboriginal groups a veto over what can be done with land pending final proof of the claim" (*Haida Nation v. British Columbia (Minister of Forests)* 2004); and "at some point a government decision will have to be made" (*Tzeachten First Nation v. Canada (Attorney General)* 2008). The substantial influence of Indigenous peoples recognized by the courts did have a ceiling (Canadian Environmental Assessment Agency, undated).

Starting before UNDRIP was passed by the United Nations and well before it was endorsed by Canada in 2010, Canadian governments, Indigenous peoples, and resource companies, prodded and directed by the courts, had created new and more collaborative arrangements for resource development. UNDRIP, therefore, was not entirely a green field of policy, law, and practice, but rather was being laid over top of an existing framework. It is the intersection between current practice and the expectations generated by UNDRIP that has created uncertainty in the Canadian resource sector.

ORIGINS OF THE UNITED NATIONS *DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES*

The Macdonald-Laurier Institute will soon release a broader analysis of UNDRIP as a companion to this paper. That paper will study UNDRIP's origins and evolution, the Harper government's reluctance to endorse the declaration, the potential for implementing its articles and clauses, and what it means for Canada. But it is useful to briefly contextualize the FPIC debate in the broader picture of UNDRIP here.

It would be understandable if Canadians thought that FPIC and UNDRIP were one and the same.

Interpretations of "free, prior, and informed consent" and its implications for Canada have dominated the legal and political debate about UNDRIP. It would be understandable if Canadians thought that FPIC and UNDRIP were one and the same.

UNDRIP is a 46-article resolution that was approved by the United Nations General Assembly in September 2007. It followed a more than 20-year process of developing a set of universal Indigenous rights to be presented to UN member states and ideally, subsequently, reflected in their respective laws, policies, and practices relating to Indigenous peoples.

Producing UNDRIP proved to be a painstaking process involving dozens of nations and most importantly, a large, international set of Indigenous organizations. It was purposefully drafted with the understanding that not all articles applied equally in all countries and

for all Indigenous peoples. Different cultures, economies, and states of development necessarily meant that UNDRIP would translate at the national level in different ways.

Yet one should not diminish the impressive scope and breadth of UNDRIP's general ambition and the potential implications of its specific articles. Working within the context of universal human rights, UNDRIP effectively sets out the individual and collective rights of Indigenous peoples, including their rights to culture, identity, language, employment, health, education, and other issues. It emphasizes self-determination and prohibiting all forms of discrimination against Indigenous peoples.

Canada is one of only four countries – along with Australia, New Zealand, and the United States – that voted against UNDRIP in 2007.

Canada is one of only four countries – along with Australia, New Zealand, and the United States – that voted against UNDRIP in 2007. These countries rooted their initial opposition in concerns about the application of UNDRIP's articles and the document's interaction with national legal, policy, and constitutional arrangements.

Gradually, though, the four countries shifted their positions from opposition to acceptance. Beginning in 2009, the national governments announced their endorsements of UNDRIP with one major caveat – all of them described the declaration as an "aspirational" document with no legal or political implications absent some action to implement or reflect its articles in government policy. The Canadian government's official statement in support of UNDRIP in 2010 is typical. It states:

> The Declaration is an aspirational document which speaks to the individual and collective rights of Indigenous peoples, taking into account their specific cultural, social and economic circumstances.
>
> Although the Declaration is a non-legally binding document that does not reflect customary international law nor change Canadian laws, our endorsement gives us the opportunity to reiterate our commitment to continue working in partnership with Aboriginal peoples in creating a better Canada....
>
> In 2007, at the time of the vote during the United Nations General Assembly, and since, Canada placed on record its concerns with various provisions of the Declaration, including provisions dealing with lands, territories and resources; free, prior and informed consent when used as a veto; self-government without recognition of the importance of negotiations; intellectual property; military issues; and the need to achieve an appropriate balance between the rights and obligations of Indigenous peoples, States and third parties. These concerns are well known and remain. However, we have since listened to Aboriginal leaders who have urged Canada to endorse the Declaration and we have also learned from the experience of other countries. We are now confident that Canada can interpret the principles expressed in the Declaration in a manner that is consistent with our Constitution and legal framework. (Indigenous and Northern Affairs Canada 2010)

So, while Canada (and other holdout countries) ultimately accepted UNDRIP and its articles, it was precisely because the government articulated that it had no legal or political implications in and of itself that it was prepared to shift its position.

LEGAL STATUS OF UNDRIP

UNDRIP's legal status is a critical part of the policy debate around its implementation and the execution of the concept of "free, prior, and informed consent." Differing perspectives on its legal standing and interaction with existing Canadian laws and practices are at the heart of much of the confusion reflected in media analysis of FPIC and its implications for Canada.

Many Indigenous communities and Canadian governments have different interpretations with respect to UNDRIP. It is indicative of longstanding differences in legal interpretation on a host of issues, including the numbered treaties of the late 19th and early 20th centuries, the meaning of elements of the *Indian Act*, the implementation of modern treaties, and the application of Supreme Court of Canada decisions.

The preponderance of legal analysis and opinion tilts in favour of the view that UNDRIP has no real legal standing in Canada.

Indigenous peoples and governments in Canada have been locked for decades in debates about interpretative differences and fundamental misunderstandings about the meaning of legal, political, and treaty terms, and processes and commitments. This is the key reason that Canadian courts have become a primary meeting ground for governments and Indigenous peoples.

The preponderance of legal analysis and opinion tilts in favour of the view that UNDRIP has no real legal standing in Canada in and of itself (Nijar 2013; Engle 2011; see also Echo-Hawk 2013; Charters 2006; Charters and Stavenhagen 2009; Henderson 2008; Lightfoot 2010; Mitchell 2014).

Siegfried Weissner has argued:

> Without a doubt, UNDRIP is a milestone of indigenous empowerment. Still, legally speaking, United Nations declarations, like almost any other resolution by the General Assembly, are of a mere hortatory nature: they are characterized as "recommendations" without legally binding character. There have been attempts to ascribe a higher degree of authority to General Assembly resolutions designated as "declarations." In 1962, the Office of Legal Affairs of the United Nations, upon request by the Commission on Human Rights, clarified that "[i]n United Nations practice, a 'declaration' is a formal and solemn instrument... resorted to only in very rare cases relating to matters of major and lasting importance where maximum compliance is expected." (Wiessner 2011)

British legal scholar Marco Odello and American Indigenous scholar Duane Champagne are representative of the view that the impact of UNDRIP is dependent upon actions by national and sub-national governments. As Odello (2011) writes:

> international law usually provides a general and abstract set of rules, the fruit of lengthy and complex negotiations and compromises. In addition, it would be a serious lack of pragmatism to forget that individuals and communities, both domestic and foreign, are today under the jurisdiction of states. Therefore, the responsible entities for ensuring their protection are the states' authorities at their different levels, from national to local governments. This protection is given through national legal norms, the system of courts and other mechanisms for the protection of human rights, such as ombudsmen and national human rights commissions. (106)

This prevailing interpretation thus sees UNDRIP is an important expression of comprehensive, long-term objectives and a recognition of widely-held historical experiences of Indigenous peoples around

the world. But without action by national governments to codify UNDRIP in their legal, political, and constitutional arrangements, it is widely viewed as an aspirational rather than binding document. It is not a treaty or UN convention (which would be legally binding) that would be signed or ratified by states. It is instead a statement endorsed by most UN members (Indigenous and Northern Affairs Canada 2015).

This view is not unchallenged. Some Indigenous leaders and activists and even legal scholars have articulated a competing view that UNDRIP does indeed have considerable legal standing. British legal scholar Alexandra Xanthaki (2009), for instance, contests the idea that UN member states viewed UNDRIP's provisions as "mere aspirations." Instead she argues:

> The text is substantially informed by international law, the rights it proclaims are consistent with general international law and the development of international standards on indigenous rights is widely perceived as an international law project. In addition, the *Declaration* can be perceived as agreed interpretation of the various UN human rights treaties concerning indigenous rights.

James Anaya (2010), UN special rapporteur on Indigenous rights, argues a similar view, noting:

> It is one thing to argue that not all of the Declaration's provisions reflect customary international law, which may be a reasonable position. It is quite another thing to sustain that none of them does, a manifestly untenable position.[1]

It is not a treaty or UN convention (which would be legally binding) that would be signed or ratified by states.

An extended discussion of the legal standing of UNDRIP by the International Law Association (ILA) in 2012 produced a legally nuanced but nonetheless strongly worded endorsement of the authority of the declaration.[2]

It is no doubt a complicated legal question and, of course, there are differing views. Yet on balance the prevailing legal view is that UNDRIP and its articles must be codified in domestic law and policy to assume enforceable legal standing. This debate nevertheless continues – and will continue – and undoubtedly will be tested in courts in Canada and internationally.

WHAT IS FREE, PRIOR, AND INFORMED CONSENT?

This ongoing debate about the legal implications of UNDRIP is critical to understanding the concept of "free, prior, and informed consent" and how it might interact with Canadian law and practices.

FPIC appears in several UNDRIP articles but the most widely-cited reference is Article 28 because of its specific connection to resource development. The article states:

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied

or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress. (United Nations 2008)

This article has contributed to a highly-charged debate about FPIC's practical meaning for resource development in Canada. The fundamental question – to borrow from Dr. Palmater's radio interview – is: Does it provide Indigenous peoples a veto over resource development? The short answer is no, but that declarative position underestimates the degree to which Indigenous peoples understand the power of UNDRIP and the fundamental importance of community engagement in convincing private companies that their resource projects are viable in a practical sense.

The longer, more productive answer is that UNDRIP and FPIC have implications for Indigenous peoples, industry, and government. It is critical that we think through these different considerations carefully so as to (1) ensure that the implementation of UNDRIP can further the cause of reconciliation and (2) create the conditions for more economic partnerships between Indigenous communities and resource companies. The critical objective must be that the adoption of FPIC does *not* undermine the progress achieved in recent decades to establish real partnerships with lasting economic benefits for Indigenous communities.

Conceptually the FPIC principle appeals to Indigenous communities because it appears to be a logical extension of existing arrangements (typically summarized as "duty to consult and accommodate"). It is seen therefore to build on the important legal victories relating to Aboriginal rights and resource use and to extend Indigenous authority significantly. The concept is also consistent with Indigenous concepts of Indigenous sovereignty and nationhood, and the insistence by First Nations on the nation-to-nation management of major affairs. The latter element – nation to nation relationships – is consistent with repeated statements by the Government of Canada on how it intends to proceed with future relations with Indigenous peoples.

FPIC has generally been a source of concern for the resource sector primarily because it introduces new uncertainty and likely greater complexity to the project approval process. The biggest risk is that it disrupts efforts by resource companies to fulfil their current obligations and the progress that has been made to establish partnerships with affected Indigenous communities. Put differently: FPIC risks changing the rules of the game just as resource companies have grown familiar with and increasingly adept at operating within the current system. The transition, if FPIC is simply adopted as envisioned in UNDRIP, could have significant consequences for the current arrangements.

Canadian governments have largely refrained from engaging these issues and instead allowed court decisions and community-level experimentation between Indigenous groups and resource companies to bring greater clarity to the process. Yet this too is changing. The Alberta government of Premier Rachel Notley has committed to implementing UNDRIP (including the FPIC clauses) and has launched a review and consultation process to determine how to fulfill this promise. Similarly the Trudeau government has committed to implementing the UN declaration and the Liberal Party platform specifically referred to UNDRIP in the context of resource development, a commitment made more politically palatable by the widespread Canadian support for the final report of the Truth and Reconciliation Commission on Indian Residential Schools. The details about how these governments intend to effect these changes are still outstanding but the commitments themselves have been interpreted by Indigenous peoples as representing a major shift in official policy and, by implication, development approval processes.

As for FPIC, the underlying question is simple: how does it affect who decides if and when a resource project can proceed? Governments continue to assert these decisions rest with them, while accepting that the courts have imposed requirements for consultations, a sharing of opportunity, and compensation for the anticipated impacts on Indigenous peoples and communities. Indigenous understanding of traditional land rights and responsibilities, interpretations of historic and modern treaties, and expectations of judicial support for their aspirations, have led Indigenous governments and their peoples to believe that their approval is necessary for projects to proceed. FPIC is thus effectively an affirmation of their pre-existing views.

Companies are less focused on the conceptual arguments and more concerned with the extent to which it adds greater uncertainty, longer project delays, and higher costs associated with additional consultation and approval processes. In this complex and evolving legal and political setting, UNDRIP and the concept of free, prior, and informed consent represents, alternatively, a welcome ratification of claims (for Indigenous peoples), an unwelcome complication (for most governments), and a potentially disruptive element that could derail valuable resource projects (for the private sector).

INDIGENOUS SUPPORT FOR FPIC

It is fair to say that UNDRIP represents both a significant political accomplishment and a source of ongoing disappointment for Canada's Indigenous leaders. Indigenous groups and key representatives were part of the international process dating back to the declaration's origins. Leading figures such as George Manuel (a member of the National Indian Brotherhood, which was a precursor to the Assembly of First Nations) were involved in establishing greater international recognition for Indigenous rights and claims, including overtures to the UN, as far back as the 1960s and 1970s (Coates 2013).

Concurrently, Indigenous people were seeking progress here in Canada to secure recognition, respect, and acknowledgement of their Aboriginal rights. Victories came slowly. The Government of Canada resisted Indigenous claims and only reluctantly agreed to Aboriginal demands and the prompting provided by judicial decisions. With the major exception in Canada of the inclusion of the recognition of "existing Aboriginal and treaty rights" (Section 35 in the *Constitution Act, 1982*), which represented a significant transition in Indigenous-government and legal relationships, the Government of Canada moved slowly and often in an obstructionist manner with regards to Indigenous demands for greater rights and legal recognition.

It was thus a source of contention that the Harper government initially refused to ratify UNDRIP and then, after endorsing it as an "aspirational" document, failed to make any substantial change to government policy. Indigenous peoples' organizations and human rights groups issued an open letter to all political parties in September 2008, arguing that:

> the Declaration also explicitly recognizes that all provisions are to be balanced with the rights of others and interpreted in accordance with principles of justice, democracy, non-discrimination, good governance and respect for the human rights of all.... Human rights declarations become universally applicable upon their adoption by the UN General Assembly, regardless of how individual states vote. To claim that countries should be exempt from principles and standards they vote against flies in the face of six decades of

> Canadian human rights advocacy at the United Nations and sets a dangerous example for other countries of the world. (Assembly of First Nations et al. 2008)

Filmmaker Elle-Máijá Tailfeathers (2010), writing about the situation in Northern Alberta, urged the Government of Canada to support UNDRIP in general and FPIC in particular:

> One of their largest concerns is the declaration's use of the phrase "free, prior and informed consent." Canada's track record with Indigenous peoples clearly illustrates that informed consent from Indigenous peoples is not one of the country's priorities. On the contrary, many of us would argue that the underlying truth behind Canada's unwillingness to endorse the declaration has more to do with exploitation of land and resources than a concern for human rights. Canada['s] endorsement of the document effectually means airing the country's dirty laundry for all to see.

Shawn Atleo, then-National Chief of the Assembly of First Nations, made the effort to get Canada to endorse and implement UNDRIP one of his highest priorities. For Atleo, as for many Indigenous leaders and community members, control over development was central to the appeal of UNDRIP:

> There will continue to be conflicts until it is recognized that First Nations have the right to prior and informed consent and must be consulted right at the outset of any proposal of development that happens in their territory. (Thompson 2010)

Other Indigenous groups went further. The Confederacy of Nations, for instance, a group known for its assertive stand on Indigenous rights, issued a startling declaration in May 2014:

> Should Canada not withdraw and cease all imposed legislation on First Nations without our free, prior and informed consent, we will strategically and calculatedly begin the economic shutdown of the Canadian economy from coast-to-coast. (O'Neil 2014)

The clamouring for action on FPIC here in Canada was matched by support from the global Indigenous community. A strong statement by the International Working Group on the Rights of Indigenous Peoples outlined the critical place that UNDRIP and FPIC held for Aboriginal people around the world.[3]

As for the legal status of FPIC, there were numerous arguments, in Canada and elsewhere, about its scope and relevance, ranging from the idea that the concept was aspirational and non-binding to the idea that free, prior, and informed consent equaled a veto and was guaranteed by international law. As Dutch legal scholar S.J. Rombouts (2014) comments:

> *free, prior and informed consent* (FPIC) is devised as a tool in international law to give indigenous peoples the power to participate in, and influence the outcome of, such decisions. At first glance, the idea seems sufficiently clear but deeper investigation reveals that this notion is not as straightforward and easily applicable as it looks. Conflicting interpretations and lack of clarity as to its scope and content hamper effective implementation of this relatively new standard.

An important commentary by Cathal Doyle and Jill Cariño (2013) makes a compelling case for moving beyond political rhetoric and focusing on practical outcomes. Their report concludes, in part:

> Collective acknowledgement by the mining industry and States of the legacy of mining in indigenous peoples' territories is fundamental to realigning its relationship with indigenous peoples. This legacy consists of abandoned sites and disastrous human rights and environmental records. In accordance with the responsibilities of States and corporations and the international community processes of reconciliation and avenues of compensation and redress should be established and implemented.

> Improvements in corporate and State practice are absolutely essential. For these to be realized adequate education and training on indigenous rights is necessary for all actors, including indigenous communities, employees and contractors of mining companies, central and local government officials, legal practitioners, and members of the police, army and security forces.[4]

FPIC remains, in Canada and internationally, hotly contested, both in terms of its legal authority and its practical effect. As S.J. Rombouts (2014) comments:

> In international human rights law this problem is recognized and during the last decades a number of legal instruments have been developed to counter the existing power imbalances. Nevertheless, genuine implementation of the developed standards is urgently needed, otherwise the codification of indigenous rights remains merely a reminder of the injustices and human rights violations that indigenous people(s) have faced and continue to face present day. Fortunately but slowly, implementation models and procedures are being developed in the context of different international and regional organizations and on the national level.

Free, prior and informed consent is seen as an important tool to realize recognition and application of Indigenous rights. The purpose of FPIC is to give Indigenous communities a stronger voice in the mentioned processes and it is rapidly becoming one of the most important concepts in contemporary international law concerning indigenous peoples. However, it is also one of the most contested and debated ideas in the context of the UNDRIP.

FPIC remains, in Canada and internationally, hotly contested.

GOVERNMENT AMBIVALENCE ABOUT FPIC

Canada's experience with UNDRIP reflects the ambivalence and contradictory positions described by Rombouts, Doyle, and others. Generally speaking, before quite recently, Canadian governments have not shared Aboriginal enthusiasm for UNDRIP or incorporated the declaration – including the FPIC clauses – into the legal or policy framework related to resource development.

It is a position that has attracted considerable criticism from Indigenous leaders and some legal activists. Consider, for instance, a statement from the Committee on the Elimination of Racial Discrimination (2012), the body which oversees the Convention on the Elimination of All Forms of Racial Discrimination:

> Canada has not fundamentally changed its position and continues to devalue this human rights instrument both domestically and internationally, affecting a wide range of Indigenous peoples' rights. UN treaty bodies are increasingly using the Declaration to interpret Indigenous rights and State obligations in existing human rights treaties. In contrast Canada claims that the Declaration is merely an "aspirational" instrument and does not reflect customary international law. The Special Rapporteur on the rights of indigenous peoples has called this "a manifestly untenable position."

Not everyone agreed. The critical source of disagreement is the binding or non-binding nature of UNDRIP in general and the extent to which it ought to be reflected in Canada's legal, political, and constitutional architecture with respect to Indigenous issues in particular.

With respect to the question about UNDRIP's legal standing, the Harper government was of the view that the declaration had no binding legal ramifications in and of itself. Its only legal standing was the extent to which it became codified in Canadian law or policy. Thomas Isaac, a Vancouver lawyer and sometime representative for resource companies, states this view – particularly with respect to the FPIC clauses – in blunt terms:

> This notion of free prior consent has no legal basis in Canada – none. Zip.... That's not to say that people ought not to seek consent. That's a different question. But is there a basis in law? Not a shred. (O'Neil 2012)

One can argue that this position is partly conceded by the United Nations. It produced an "outcomes document" in 2014 that reinforced international support for UNDRIP and outlined administrative efforts to implement the agreement. The outcomes document had two particular references to resource development issues:

> 17. We commit to establish at the national level, in conjunction with indigenous peoples concerned, fair, independent, impartial, open and transparent processes to acknowledge, advance and adjudicate the rights of indigenous peoples pertaining to lands, territories and resources. Such processes will be culturally appropriate and flexible, and competent to safeguard free, prior and informed consent by indigenous peoples prior to development or use of lands, territories and resources.
>
> 18. We commit to consult and cooperate with indigenous peoples to address the impact or potential impact of major development projects, including extractive industries and to ensure that indigenous peoples participate in the benefits from such projects. The rights of indigenous people regarding development of lands, territories and resources, will be incorporated into law, policies and practice. (General Assembly of the United Nations 2014)

This language – particularly the focus on the "national level" – reinforces the reality that UNDRIP can only be actualized by national governments and must reflect national circumstances and priorities. Yet even then the Canadian government was the only one to refuse to endorse the 2014 "outcomes document." Its opposition rested on the assumption that FPIC interferes with the full and extensive system of consultation, engagement, and decision-making embedded in treaties and the current review processes. The government's statement from September 2014 explains:

> Canada does not interpret FPIC as providing indigenous peoples with a veto. Domestically, Canada consults with Aboriginal communities and organizations on matters that may impact their interests or rights. This is important for good governance, sound policy development and decision-making. Canada has strong consultation processes in place, and our courts have reinforced the need for such processes as a matter of law. Agreeing to paragraph 20 would negate this important aspect of Canadian law and policy.
>
> Canada's position on this issue is well known and has not changed. While the UN Declaration on the Rights of Indigenous Peoples and the Outcome Document for this World Conference are not legally binding and do not reflect customary international law, or change Canadian laws, we regret that our concerns were not taken into account.
>
> As a result, Canada cannot associate itself with the elements contained in this outcome document related to free, prior and informed consent. (Canada 2014)

This position was criticized by Indigenous peoples, a range of legal and constitutional scholars and academics, and some international representatives. UN Special Rapporteur on the Rights of Indigenous Peoples, James Anaya (2014), for instance, issued a harsh report on Canadian policy.

Jody Wilson-Raybould, then-BC Regional Chief of the Assembly of First Nations (and as of October 2015, Minister of Justice in the Trudeau government), observes that:

> Dr. Anaya's conclusions and recommendations all speak to the need for strengthening our collective resolve to ensuring reconciliation between Aboriginal Peoples and the Crown, and to translating the promise of section 35 of the Canadian Constitution and the articles set out in UNDRIP into practical benefits on the ground in all our communities. (Alberta Native News 2014)

On the specific issue of FPIC, Anaya contends that:

> The declaration doesn't say Indigenous people have a right to withhold consent. It says states shall consult with indigenous peoples with the objective of achieving their consent. (O'Neil 2013)

The special rapporteur's comment strikes at the heart of the ongoing debate about FPIC.

The special rapporteur's comment strikes at the heart of the ongoing debate about FPIC – including the extent to which it requires substantial changes to the current process of consultation and project approval and represents a "veto" for Indigenous communities.

INDUSTRY CONCERNS ABOUT FPIC

If the Harper government was opposed to FPIC, the resource sector was quietly dismayed about its possible implications for the project approval process. It created uncertainty and, of course, predictability and stability are key parts of any business and investment planning, particularly one where investments are typically calibrated in the hundreds of millions of dollars.

Resource companies had had a generally straight path to project approval for much of the post-Second World War era. The bias in favour of resource development reflected itself in direct and indirect government subsidies (think, for instance, tax preferences for exploration costs) and supporting investments in infrastructure. Conditions began to change in the late 20th century. A greater emphasis on environmental assessment and new expectations with regards to corporate social responsibility placed additional requirements on firms. The series of judicial decisions discussed earlier gave Indigenous communities greater legal standing. The companies adjusted and paid greater attention to Indigenous needs.

The addition of "duty to consult and accommodate" rules complicated project approval processes but made it clear that companies had to recognize their obligations to Indigenous communities. Starting in 2004, companies and Indigenous groups tested the boundaries of the duty to consult and accommodate through negotiations and occasional legal challenges.[5]

Within a decade, the environment had settled down, primarily through the resolution of hundreds of impact and benefit agreements, the creation of units within companies devoted to working with Aboriginal communities, growing Indigenous experience with negotiations, and clearer expectations

about the nature of the agreements (which might include cash, job and training guarantees, preferential contracting, and specific responsibilities for environmental assessment and remediation). Over a comparatively short period of time, resource companies learned how to navigate the increasingly complicated environmental review processes and, with a mixed but generally constructive track record, adapt to the negotiation requirements with Indigenous communities. But receptiveness varied from community to community and project to project. (A caveat that applies equally, it must be noted, to non-Indigenous people, communities and regions.)

Receptiveness varied from community to community and project to project.

As Gavin Dirom, CEO of the Mining Exploration Association of British Columbia, said in 2011:

> It's absolutely the No. 1 issue facing the [mining], exploration and development sector in the province... It's the government's duty to consult, and it's the first nations' obligation to participate [in consultation] and hopefully we'll move projects forward, or have clearer decisions. (Penner 2011)

Efforts by resource companies to better engage, consult, and partner with Indigenous communities have generally been matched by cooperation from Indigenous communities. Consider, for instance, that in the aftermath of the *Tsilhqot'in* decision that expanded consultation requirements, Joe Alphonse, Tribal Chief of the Tsilhqot'in National Government and Roger William, elected Chief of Xeni Gwet'in First Nation write:

> To incorporate consent into the way in which governments operate is a path to avoid countless new court cases, decades of deepening uncertainty and risky investment in British Columbia. For First Nations this is not about separating from Canada, but rather about obtaining recognition as legitimate governments and landowners with a say in what happens in our homes.
>
> Obtaining the consent of First Nations is not as complicated and problematic as many make it out to be. For example, the Tsilhqot'in National Government is introducing its mining policy, which at its core is about how to obtain our government's consent for projects, so developers and First Nations can work together creatively to advance ecologically and culturally acceptable projects.
>
> We hope that now, after this Supreme Court ruling real, genuine and lasting reconciliation will be the order of the day. After a long and unfortunate era of Crown denial, we have an opportunity in this province, to start a new chapter together, one that recognizes the diversity and richness of First Nations in this province and everything we have to contribute to our collective way forward. (Alphonse and William 2014)

The key point, then, is that, notwithstanding imperfections and ongoing areas for improvement, the existing system of consultation and project approvals has become familiar for the resource sector and is producing positive results for companies and Indigenous communities. It is in this context that the debate about FPIC and its legal and policy ramifications produces the risk of uncertainty.

In the resource sector, certainty and clarity are core requirements. A major resource project, such as a mine, costs hundreds of millions dollars. A mega-project, like a pipeline or hydroelectric station, counts construction costs in the billions of dollars. To secure the financing for such undertakings requires the mitigation of risk, and the assurance that the project will proceed in a systematic manner. After all, the other risks inherent in resource development – global market price and demand – cannot be controlled at the company level, even in commodity sectors that have relatively few major corporations. Companies work closely with the national, sub-national, and now Aboriginal governments to secure arrangements that reduce corporate risk exposure to a manageable level.

Resource corporations in Canada have demonstrated a system-wide willingness to work with Aboriginal communities (albeit with differing levels of success). There is growing openness, even, to "free, prior, and informed consent" and to developing more inclusive approaches to resource development. The industry has managed to adapt to the "duty to consult and accommodate" requirements as set out by the Supreme Court and established a substantial track record for economic collaborations. This came at considerable financial cost and some project delays and required substantial adaptations in corporate operations. There were failures, to be sure, particularly in the Ring of Fire initiative in Northern Ontario. It was a learning process – a sometimes painful one – but the results have generally been positive.

Yet the escalating expectations of UNDRIP in general and FPIC in particular represent a new burden and much greater uncertainty. To the extent that "consent" is interpreted as a veto, as it is by some Indigenous groups, and establishes a higher standard of Indigenous approval, the potential for delays and higher costs is heightened.

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A significant report by the Boreal Leadership Council (BLC) – composed of businesses, Indigenous leaders, and environmental groups – released in September 2015, suggested further corporate flexibility on the question of Aboriginal assent to resource projects. The report endorsed the application of "free, prior, and informed consent" to its expectations of members' relationships with Indigenous communities. The corporate members of BLC, which included representatives like Suncor Energy, an oil sands firm, and Tembec, a Quebec–based forestry company, re-stated their commitment to positive and constructive relations with Aboriginal communities; however they stopped short of publicly endorsing FPIC or the BLC statement. As Peter MacConnachie of Suncor states:

> We support the research the Boreal Leadership Council is doing and welcome the opportunity to learn more about what [free, prior, and informed consent] means to aboriginal communities.... What's important to Suncor is that we continue to have strong, mutually beneficial long-term relationships with First Nations. (McCarthy 2015)

FPIC AND RESOURCE DEVELOPMENT IN CANADA

The debate over FPIC reveals an ongoing weakness in the Canadian approach to Indigenous engagement in the resource sector.[6] No one disputes that Indigenous communities have a right to be consulted on development projects in their traditional territories. These communities also have a right to be accommodated and compensated for any disruptions to these lands. Yet, as mentioned above, the precise nature of the rights to consultation and accommodation have not been defined.

At present the primary means of determining the limits of these rights is through negotiated agreements (in effect Indigenous peoples agree that they have been properly consulted and adequately accommodated), through the terms of modern treaties, which define procedures for

Indigenous engagement and accommodation, and through redress to the courts. The latter can be a costly, lengthy, and uncertain process and often has a chilling effect on resource development. The courts have done a great deal to refine and define Aboriginal resource rights. But it is a slow, open-ended, complicated, and imprecise process that is better at defining broad rights than it is at providing metrics for settlements over resource matters. It must be said, however, that Indigenous peoples are completely within their rights to press for legal remedies and they, like all Canadians who seek a precise definition of their rights, should be supported in the use of the court to resolve outstanding legal issues.

Had it not been for the Supreme Court decisions on *Haida* and *Taku*, for instance, it might well have taken a generation or more to develop the principles of consultation and accommodation. That the court did not provide a specific and well-drawn road map for how this legal right and government responsibility should be exercised is part and parcel of a legal process that tends to prefer conceptual decisions (determining, for instance, whether First Nations, Métis, and Inuit should be consulted on resource developments) more than specific remedies (for example, what is a fair agreement for providing consent to a project and what is an appropriate compensation for the impact on territories and lifestyles).

Virtually no one would now argue that consultation and accommodation should not be part of the project approval process.

Resource companies have adapted to this new regime as part of the cost of doing business. Virtually no one would now argue that consultation and accommodation should not be part of the project approval process; many industry observers would agree that the new arrangements have greatly improved relations with Indigenous communities, produced valuable business partners, drawn hundreds of Aboriginal workers into the industry, and created a better and more stable environment for business operations. Each of the consultation and review processes represents a "tax" on development, adding costs and time to the expensive effort to bring Canadian resources to market. Yet it is widely seen as part of the cost of doing business.

The issue is not whether Indigenous people have a major role in project evaluation, but rather the extent and authority assigned to Indigenous governments and communities. To a substantial degree, the power has already shifted toward Indigenous peoples. While there is still considerable debate and many questions remain, real progress is being made on adopting the "duty to consult and accommodate."

By bringing international agreements into the legal-political equation, the concept of "free, prior, and informed consent" has the potential to significantly confuse this process. Some Indigenous people equate FPIC as providing a veto over resource projects even though such an interpretation is not clearly laid out by the UNDRIP drafters (MacKay 2004; Campbell and Oxman 2012). Governments have typically viewed FPIC as yet another ill-defined legal and procedural impediment to official decision-making and evaluative processes, including those set out in modern treaties. Resource companies are worried about an additional level of uncertainty and expectation. All parties will ultimately adapt but it will result in additional costs (including opportunity costs for companies and prospective Indigenous partners), longer negotiations, and legal confusion.

It must be remembered that UNDRIP was never intended to have uniform application across the world. It must be implemented in a way that is consistent with national objectives, legal and constitutional foundations, and stages of development.

Also, UNDRIP did not define the full meaning of "consent," leaving the term open to conflicting interpretations. It is, when practical considerations are linked to legal requirements, rather beside

the point. As Indigenous peoples have shown, sustained and engaged protests, as with the Northern Gateway Pipeline, can slow if not stop a multi-billion-dollar initiative. For companies to proceed with major projects in the current environment, they need to know that they have both the political and legal right to proceed. They do not require unanimous consent, any more than municipal governments require complete community support for urban developments. Rather, there needs to be an appropriate process in place, one that respects Indigenous realities and that provides for substantial returns to affected communities. Consent may not legally bestow a veto; the practical realities of working on Indigenous territories do, however, set a high bar for corporate and government decisions to proceed with large scale resource projects.

Despite the difficulties presented by an embrace of FPIC, current conditions provide an opportunity to reflect the spirit of UNDRIP in Canada's resource development framework. The country urgently needs a clear definition of an appropriate standard for Indigenous engagement and appropriate means of resolving these expectations and rights relating to resource development.

The search for a resolution begins with the realization that Indigenous people will not – and should not – surrender any rights that they currently have without openly negotiated and full and final agreements. Nor should Aboriginal communities walk away from the idea that they deserve, under Canadian law, a more secure and specific role in the country's economic future.

All parties will ultimately adapt but it will result in additional costs.

Secondly, it is vital that the Canadian political and legal system provide clarity as to the authority and rights of Indigenous peoples regarding resource development. Vague declarations and non-specific court decisions define direction and intent but do not provide a great deal of practical assistance to participants in the resource sector.

Thirdly, those Indigenous rights must take into account the need and obligation for national, provincial, and territorial governments to manage the use and careful extraction of natural resources in the general and the Indigenous interest.

Finally, whatever system is put in place (while certain to never get unanimous support from all participants) must be fair, must be seen to be fair, must be faster, and must be more certain. The goal should not be to limit or constrain Indigenous rights but to provide a review and resolution process that uses Indigenous rights as one of the foundations for decision-making (the other being environmental assessment) and not as an irritating addition to an already complicated process.

UNDRIP and the concept of "free, prior, and informed consent" demonstrate the interest of Indigenous peoples around the world in the development of fair and sustainable processes for Indigenous participation in resource approval processes. In that manner, UNDRIP challenges Canada to remain a world leader in accommodating, supporting, and now requiring Indigenous engagement in the sector. The concept of "free, prior, and informed consent," while not clearly stipulated by the drafters and the UN to create an Indigenous veto over development, nonetheless illustrates the continued ambiguity surrounding Indigenous participation in resource development.

The international attention generated by UNDRIP and the concept of free, prior, and informed consent challenges Indigenous peoples, governments, and private sector companies to continue their efforts at innovation and to provide clarity, simplicity, and speedier and more equitable outcomes. Canada should not be constrained by the concept of FPIC, but rather should seek a made-in Canada, Indigenous-centric system of ensuring Indigenous people enter into discussions with resource companies with assurances of fairness and appropriate outcomes.

A MADE-IN-CANADA SOLUTION FOR INDIGENOUS ENGAGEMENT IN RESOURCE DEVELOPMENT

The resource sector is the vanguard of reconciliation with Indigenous peoples in Canada and can do even better in the future. If this process is done properly – and the country is not yet there – the resulting system should also improve opportunities for resource companies, streamline government systems, and thereby ensure that Canada capitalizes on its natural resource potential. To get there requires significant changes to current Canadian policies and processes – based on acceptance by all parties of the legitimacy and strength of Indigenous resource rights, dedication to the spirit of UNDRIP as the international standard for reconciliation, and a sincere commitment to sharing prosperity with Indigenous peoples.

The Trudeau government has said that it intends to implement UNDRIP, including the concept of "free, prior, and informed consent." It has several options going forward. The government could, for example, proceed by way of constitutional amendment, and incorporate UNDRIP directly in the Canadian Constitution. Given the nature of the amending formula in Canada, this approach is improbable and would take a great deal of time.

Alternately, the government could issue a formal statement in support of UNDRIP, short of a legislative initiative, and could require a formal program and legislative review to determine the degree to which current government policy conforms to UNDRIP principles. Such a government-led approach, likely time-consuming and costly, would revise existing systems but would not necessarily produce marked departures in approach and procedure.

The Government of Canada could also pass specific legislation making UNDRIP official policy, a process that would require extensive discussion with Indigenous organizations and leaders and would likely require sweeping changes in structural arrangements and processes. Given the extensive restructuring required in Canadian Indigenous policy, such an approach would delay substantially the resolution of outstanding issues relating to resource development.

There are other ways of proceeding that hold even greater promise for long-term viability. The reality is that FPIC exists substantially in practice, if not fully in law – although it remains to be determined where the precise boundaries of national sovereignty are to be found with regards to resource development. Canada really has two choices going forward:

- To continue to debate, and litigate, the historic and legal nuances of UNDRIP and FPIC, a costly and difficult process that could harm Indigenous and non-Indigenous interests alike, or
- embrace UNDRIP and FPIC, in the spirit of reconciliation and with an eye toward economic and developmental realities, and establish a new, made-in-Canada and made-with-Indigenous-peoples approach that provides this country with a practical, equitable, and manageable path for effective consultation and accommodation and ultimately for resource development. Furthermore, the recommended approach would commit government and industry to the co-production of policy, a strategy that is consist with the Trudeau government's dedication to working with Indigenous organizations and communities to chart a shared future.

The recommendations that follow reflect the second option as the best means for continuing the

progress towards greater economic partnerships between Indigenous communities and resource companies. The goal should be to strengthen the aspects of the Canadian system that are presently working and address areas of weaknesses – particularly the lack of clarity with respect to the roles and responsibilities of Indigenous communities, governments, and the private sector.

The key point is that, while it would be a mistake to fully substitute our current regime of consultation and accommodation with "free, prior, and informed consent," there are improvements that can be undertaken that reflect the spirit of UNDRIP and strengthen Canada's model. Here are five key recommendations to form the basis of made-in-Canada, Indigenous-driven reforms to our system of consultation and accommodation for Indigenous communities.

1. The Government of Canada and national Indigenous organizations, including the Assembly of First Nations, Inuit Tapiriit Kanatami, and the Métis National Council, should seek to develop a common declaration, or public statement, that articulates support for the spirit and intent underpinning the UN *Declaration on the Rights of Indigenous Peoples* as it relates to resource development.

   Such a statement should emphasize the commitment of all participants to the idea of national prosperity sharing and the development of the country's natural resource endowment within a legal and policy framework that respects environmental sustainability and Indigenous engagement and participation.

   Reaching such an agreement would face challenges. The Harper government's attempt at education reform is evidence of the limitations of negotiating these types of agreements with disparate organizations that have different mandates, interests, and internal processes. As attempts to negotiate the *First Nations Control of First Nations Education Act* demonstrated, individual chiefs and First Nations could disagree with the process or the statement. The shared resolution will have to provide room for individual communities to stand aside from the general agreement. There are other groups such as the Congress of Aboriginal Peoples and the Native Women's Association of Canada who would invariably insist on participating in the process.

   Individual chiefs and First Nations could disagree with the process or the statement.

   It does seem time, however, for Indigenous peoples to work toward a more uniform position on these critical issues and for the national conversation to focus on both the effort to improve government-Indigenous and private sector-Indigenous relations, and the need for greater clarity on the aspirations, values, and expectations of Indigenous peoples with respect to resource development. Put more simply, reconciliation requires contributions from all participants.

   Ideally, but separately, resource companies and/or industry associations could make comparable declarations accepting UNDRIP and FPIC as the foundation for their future relationships with Indigenous communities.

2. The Government of Canada and the provinces and the territories – working in full cooperation with Indigenous organizations and peoples – have to define the manner in which they will determine when and how the "national interest" intersects with the interests of a specific Indigenous community or group with regard to resource development.

   The Supreme Court, in the *Tsilhqot'in* decision in 2014, made it clear that the government could claim an overriding interest in a project but that it had to make the criteria used for doing so clear. Doing this on a project-by-project basis would cause significant administrative, legal, and political complications.

Broadly speaking there are scenarios in which it would be quite reasonable for the government to determine a project should proceed in spite of objections from some number of opponents, including Indigenous communities. What happens, for instance, if a mining project obtains the support of five Indigenous communities but fails to secure one? What if 22 out of 25 communities support a specific pipeline project? These might be cases in which the government might exercise its override authority. One could easily conceive of other scenarios where the economic, environmental, or strategic case for proceeding with a project outweighs local Indigenous opposition.

Identifying these parameters for state intervention ahead of time – and without reference to a specific project – would allow for a robust national debate and open and transparent rules for all participants in the development process. Indigenous leaders understand the importance of other compelling interests. If the parameters are developed in a collaborative manner, these negotiations could well lead to the creation of a generally shared understanding of how Indigenous and non-indigenous rights and expectations interact.

3. The federal government, provinces, territories, and national Indigenous organizations could seek to negotiate a national framework or regional ones that capture provincial and territorial circumstances and that clarify existing case law on Indigenous rights regarding resource development and the role for Indigenous participation.

   This work is already underway at the level of individual First Nations. Consider the Simpcw Consultation and Accommodation Framework (central British Columbia), which provides governments and companies with precise outlines of preferred negotiation and resolution processes. Producing similar agreements on a larger scale (perhaps multiple communities within a region) would reflect UNDRIP's spirit of consultation, engagement, and self-determination.

   Obviously Canadians need to be realistic about what progress is possible. A single, national negotiating framework is too ambitious in the current environment. But that does not preclude interested parties – including Indigenous governments, government agencies, and private sector representatives – from establishing local or regional frameworks for consultation and accommodation.

   Broad acceptance of such a framework would reflect the aspirations of UNDRIP, the Indigenous legal rights as defined by the Supreme Court of Canada, and historic treaties and modern agreements. It would provide a clear signal about where in the country conditions are right for collaboration in resource development.

4. Canada requires a decision-making and conflict resolution system that is culturally sensitive, timely, and fair. The establishment of a non-judicial arbitration body, staffed by commissioners acceptable to all parties and with a mandate to resolve disputes, would go a long way toward providing a transparent mechanism that respects Indigenous cultures and political processes, and spells out the relative rights and responsibilities of Indigenous peoples, governments, and corporations.

   Such a process, if the mandate is defined carefully and the system's participants understand and share a commitment to careful and responsive decision-making, would produce faster approvals and better agreements. One such system is the Waitangi Tribunal in New Zealand, which provides for evidence-based and culturally informed decisions involving Maori peoples and Maori rights, focusing largely on historical situations. The Commission has played a significant role in reducing (but not eliminating) legal tensions and conflicts in New Zealand.[7]

   Canada has made a step in this direction with the Specific Claims Tribunal Canada, which has a fairly narrow mandate but which works with a similar goal of providing less expensive and faster resolutions of outstanding Indigenous issues.[8] The current legal system, while costly and

time-consuming, has its strengths – the reality is that Indigenous people in Canada would not have achieved the rights and recognitions of today without more than 50 years of sustained legal pressure. It may well be time, however, to find a better, faster, and more equitable approach that better serves Indigenous and non-Indigenous peoples.

5. Finally, Indigenous communities could issue "Indigenous licences" with respect to UNDRIP and in turn FPIC by issuing a declaration that sets out Indigenous requirements and expectations for participation in resource development. Indigenous peoples could, in effect, define what "free, prior, and informed consent" means for them in the form of a framework for resource development and Indigenous approval. Such a declaration/statement could contain the following elements:
   - A national Indigenous framework that allows for regional and local considerations and priorities;
   - established minimum standards for consultation and accommodation;
   - specific consultation and approval processes that meet community requirements and expectations;
   - any areas – such as cultural and sacred sites or fields of development – that would be non-negotiable in the context of resource development;
   - broad expectations in terms of employment, training, education, resource sharing and equity ownership, and community benefits; and
   - requirements concerning environmental evaluation, monitoring, and remediation.

   The goal here would be for Indigenous peoples to outline their requirements and expectations regarding resource development and to provide a foundation for ongoing and mutually beneficial engagement with the resource sector. If Indigenous groups set their expectations too high, companies would withdraw or slow their work, putting community benefits at risk. If Indigenous governments put standards in place that governments found unacceptable, government investment in community development would likely slow as well. Over time – and one suspects fairly quickly – a new and sustainable equilibrium will emerge. This could result in an Indigenous-led programme of defining the parameters for engagement, consultation, and project approval. If successful, this approach could provide an impressive foundation for long-term collaboration on resource development and management.

Indigenous peoples could, in effect, define what "free, prior, and informed consent" means for them.

This description of "made in Canada", referring to a co-production of a long-term solution rather than a court-imposed or externally directed model (such as FPIC), has been at a high level. It understates the complexity of what a formal agreement might contain. For example, signatories to modern treaties have already concluded complex and impressive strategies for ensuring Indigenous participation in resource development. Equally, First Nations have considerably more authority over development on reserve lands or selected set-aside lands identified through the treaty process than they do over the largest extent of their traditional territories. There are many areas in Canada subject to overlapping claims by First Nations, a situation that will be made more complex through the recent empowerment of Métis and non-status Indians as a result of the Supreme Court's decision in the Harry Daniels case (*Daniels v. Canada*, Supreme Court of Canada, 2016). On lands with proven Aboriginal title, such as those identified through the *Tsilhqot'in* case in British Columbia, the need for Indigenous consent is clearly and explicitly laid out by the Court (with a small remaining caveat for the expression of the national interest in exceptional circumstances).

Any process put in place in Canada will have to, in order to have effect, spell out what is meant by "consent", and outline the means of resolving disputes when Indigenous opposition is met by governmental determination to proceed. The degree to which a more precise definition can be provided and a conflict resolution process determined will influence the effectiveness and credibility of the new system. Such an accord could describe the point at which consultation is required — i.e. perhaps at the start of exploratory activities — and could outline basic principles of resource revenue sharing/prosperity sharing, based on the requirements to accommodate Indigenous needs and preserve the commercial viability of the resource projects. A new process could lift the focus from individual resource projects, which put the onus on single (and often small) resource firms, and permit region-wide discussions that include more firms, more Indigenous groups and greater government engagement.

In other words, the "made in Canada" approach could, using FPIC as inspiration and guide but also relying on Canadian court decisions, existing treaties, and government policies, provide the country with much-needed clarity about the extent and limitations on Indigenous consent, and offer a co-produced framework within which resource firms and Indigenous organizations and communities could operate.

In the past, certainty applied primarily to the ability of governments and businesses to know their planning and operational environment. With the approach advocated here, Indigenous peoples and communities would share equally in the certainty provided, for they would have an assured and specified role, more precise powers and responsibilities, and the valuable assurance that the processes being used to shape resource development in their traditional territories had received broad national endorsement, based on the goals and values expressed in UNDRIP and under the principles of "free, prior and informed consent."

CONCLUSION

There is a tendency to focus on the weaknesses of Canada's regime for consultation and accommodation of Indigenous communities in the process of making judgments on natural resource projects.

Yet this negative perception ignores the progress that has occurred between Indigenous communities and resource companies. Experience has shown that Indigenous communities are not inherently opposed to resource development. They expect to be properly consulted, engaged, and accommodated, and they want to be partners in prosperity. These are reasonable expectations – in fact, they are now legal requirements on governments and resource companies following a series of judicial decisions that have helped to shape the duty to consult and accommodation framework.

The Trudeau government's support for the United Nations *Declaration on the Rights of Indigenous Peoples* in general and the concept of "free, prior, and informed consent" in particular has produced considerable debate about the legal, political, and constitutional implications of implementing the declaration.

The primary focus has been on FPIC and what it means for Canadian law and practices, and how it will affect resource development. This debate has tended to be marked by assertion and assumption rather than dispassionate analysis.

The Trudeau government can deliver on its commitment to implement FPIC not simply by codifying the UN clauses, but rather by adopting made-in-Canada, Indigenous-driven reforms to the current Canadian regimes. Such reforms have potentially substantial implications for Indigenous communities, governments, and the resource sector.

The goal should be to strengthen the aspects of the Canadian system that are presently working and address areas of weaknesses – particularly the lack of clarity with respect to the roles and responsibilities for all three parties.

In the end, all participants in the natural resource field need greater certainty as to decision-making processes and respective responsibilities and authority. In the short term, government statements concerning UNDRIP have added to uncertainty, but this can be resolved. Given that Canada long-ignored Indigenous demands for greater say in development processes, it is hardly surprising that they expect Canada to respond constructively to UNDRIP and the implied commitment to "free, prior and informed consent." The country now faces a fairly simple choice between the current trajectory – political struggles and court challenges – and a more collaborative co-production of a policy approach that could bring about real and sustained improvements in the resource development processes in Canada. Working with Indigenous organizations is the only reasonable path forward.

Canada needs 21st century processes to respond to both the legacy of historical injustices and contemporary Indigenous rights. The country has a road forward, built on the extensive and constructive relationships that already exist between Indigenous communities, private companies, and governments. Using this experience as a foundation for future development, accepting the spirit of UNDRIP, and desiring long-term partnerships with Indigenous peoples, Canada has an opportunity to create a new international standard for co-operation.

ABOUT THE AUTHORS

Kenneth S. Coates

Kenneth S. Coates is MLI's Senior Fellow in Aboriginal and Northern Canadian Issues. He is the Canada Research Chair in Regional Innovation in the Johnson-Shoyama Graduate School of Public Policy at the University of Saskatchewan. He has served at universities across Canada and at the University of Waikato (New Zealand), an institution known internationally for its work on Indigenous affairs. He has also worked as a consultant for Indigenous groups and governments in Canada, New Zealand, and Australia as well as for the United Nations, companies, and think tanks.

He has previously published on such topics as Arctic sovereignty, Aboriginal rights in the Maritimes, northern treaty and landclaims processes, regional economic development, and government strategies for working with Indigenous peoples in Canada. His book, *A Global History of Indigenous Peoples: Struggle and Survival*, offered a world history perspective on the issues facing Indigenous communities and governments. He was co-author of the Donner Prize winner for the best book on public policy in Canada, *Arctic Front: Defending Canada in the Far North*, and was short-listed for the same award for his earlier work, *The Marshall Decision and Aboriginal Rights in the Maritimes*.

Ken contributes regularly, through newspaper pieces and radio and television interviews, to contemporary discussions on northern, Indigenous, and technology-related issues.

Blaine Christopher Favel

Blaine Favel is the 14th chancellor of the University of Saskatchewan, having taken up his duties on July 1 of 2013. Mr. Favel is an influential Plains Cree leader who has made significant contributions to scholarship, education, public service and the Canadian public good.

During his tenure as Chief of the Poundmaker Cree Nation in Cutknife, SK, Chief Favel established the first community-based justice program for First Nations with the introduction of sentencing circles on reserves. A former Grand Chief of the Federation of Saskatchewan Indian Nations, Mr. Favel pioneered two national firsts; the establishment of the First Nations Bank of Canada, Canada's only Aboriginal controlled bank, and the Saskatchewan Indian Gaming Authority, Canada's first Indian gaming organization. He implemented the 1996 Treaty Implementation Process under the supervision of the Office of the Treaty Commissioner with the governments of Canada and Saskatchewan.

Mr. Favel was appointed to an ambassadorial level posting by Prime Minister Chrétien as Canadian Counsellor on International Indigenous Issues. This office advised Cabinet and the Foreign Affairs and International Trade Minister on human rights and trade issues affecting indigenous peoples globally. Mr. Favel has also worked as legal counsel with the law firm of Bennett Jones and as an investment banker with RBC Capital Markets energy group. He was a senior personal adviser to two Assembly of First Nations National Chiefs, Ovide Mercredi and Phil Fontaine.

REFERENCES

Alberta Native News. 2014. "UN Report Warns of a Crisis in Canada." *Alberta Native News*, May 21.

Alphonse, Joe, and Roger William. 2014. "Ruling Can Bring Real Reconciliation." *Vancouver Sun*, August 9.

Anaya, James. 2010. *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, James Anaya. Addendum: Cases Examined by the Special Rapporteur (June 2009 – July 2010)*. Document A/HRC/15/37/Add.1. United Nations, Human Rights Council.

Anaya, James. 2014. Report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya. Addendum: The Situation of Indigenous Peoples in Canada. Human Rights Council, 27th session. United Nations, Human Rights Council. Available at http://unsr.jamesanaya.org/country-reports/the-situation-of-indigenous-peoples-in-canada.

Assembly of First Nations, et al. 2008. "Open Letter to all Political Parties." News Release, September 12. Available at http://ubcic.nationbuilder.com/News_Releases/UBCICNews09120801.htm.

Beckman v. Little Salmon/Carmacks First Nation, 2010 S.C.C. 53, [2010] 3 S.C.R. 103.

Behn v. Moulton Contracting Ltd., 2013 S.C.C. 26, [2013] 2 S.C.R. 227.

Boreal Leadership Council. 2012. *Free, Prior, and Informed Consent in Canada: Towards Practical Guidance for Developers and Aboriginal Communities.* Boreal Leadership Council.

Campbell, Jasmine, and Michael Oxman. 2012. *Engaging with Free, Prior, and Informed Consent.* Business for Social Responsibility [BSR]. Available at http://www.bsr.org/reports/BSR_Engaging_With_FPIC.pdf.

Canada. 2014. *Canada's Statement on the World Conference on Indigenous Peoples Outcome Document*. Permanent Mission of Canada to the United Nations, September 22. Available at http://www.canadainternational.gc.ca/prmny-mponu/canada_un-canada_onu/statements-declarations/other-autres/2014-09-22_wcipd-padd.aspx?lang=eng.

Canadian Environmental Assessment Agency [CEAA]. Undated. *The Law of Canada in Relation to UNDRIP.* Canadian Environmental Assessment Agency. Available at https://ceaa-acee.gc.ca/050/documents/p63928/92200E.pdf.

Charters, Claire. 2006. "The Rights of Indigenous Peoples." *New Zealand Law Journal* (October): 335–337. Available at http://www.converge.org.nz/pma/cc001006.pdf.

Charters, Claire, and Rodolfo Stavenhagen, eds. 2009. Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples. International Work Group for Indigenous Affairs. Available at http://www.internationalfunders.org/documents/MakingtheDeclarationWork.pdf.

Coates, Ken. 2015. *Sharing the Wealth: How Resource Revenue Sharing Agreements Can Honour Treaties, Improve Communities and Facilitate Canadian Development*. Ottawa: Macdonald-Laurier Institute. http://www.macdonaldlaurier.ca/files/pdf/MLIresourcerevenuesharingweb.pdf

Coates, Ken. 2013. "From Aspiration to Inspiration: UNDRIP Finding Deep Traction in Indigenous Communities." Blog post. Centre for International Governance Innovation, September 18. Available at https://www.cigionline.org/blogs/aspiration-inspiration-undrip-finding-deep-traction-indigenous-communities.

Coates, Ken, Greg Finngenan, Craig Hall, Kelly Lindsay, *Unearthing Human Resources: Aboriginal Skills and Employment in the Natural Resource Sector*, Ottawa: Macdonald-Laurier Institute, 2015. Available at http://www.macdonaldlaurier.ca/files/pdf/MLIAboriginalResources8-12-15-webready-V2.pdf

Coates, Ken, and Sean Speer. 2016. *From a Mandate for Change to a Plan to Govern: Building a New Aboriginal Opportunities Agenda*. Commentary. Macdonald-Laurier Institute, March. Available at http://www.macdonaldlaurier.ca/files/pdf/MLICommentaryCoatesSpeer-03-16-WebReadyV2.pdf.

Committee on the Elimination of Racial Discrimination. 2012. *Response to Canada's 19th and 20th Periodic Reports: Alternative Report on Canada's Actions on the UN Declaration on the Rights of Indigenous Peoples*. 80th Session, Geneva, 13 February – 9 March 2012. United Nations. Available at http://www2.ohchr.org/english/bodies/cerd/docs/ngos/NGOsUNDRIP_Canada_CERD80.pdf.

Crowley, Brian Lee and Ken Coates. 2013. *New Beginnings: How Canada's Natural Resource Wealth Could Re-Shape Relations with Aboriginal People*. Ottawa: Macdonald-Laurier Institute. Available at http://www.macdonaldlaurier.ca/files/pdf/2013.05.30-MLI-3NorthernGateway-WebReady-vFinal.pdf

Crowley, Brian Lee, and Ken Coates. 2013. *The Way Out: New Thinking about Aboriginal Engagement and Energy Infrastructure to the West Coast*. Aboriginal Canada and the Natural Resource Economy Series, 3. Macdonald-Laurier Institute, May. Available at http://www.macdonaldlaurier.ca/files/pdf/2013.05.30-MLI-3NorthernGateway-WebReady-vFinal.pdf.

Daniels v. Canada (Indian Affairs and APPEAL HEARD: October 8, 2015 Northern Development), 2016 SCC 12.

Doyle, Cathal. 2014. *Indigenous Peoples, Title to Territory, Rights and Resources: The Transformative Role of Free Prior and Informed Consent*. London: Routledge.

Doyle, Cathal, and Jill Cariño. 2013. *Making Free, Prior and Informed Consent a Reality: Indigenous Peoples and the Extractive Sector*. Indigenous Peoples Links, Middlesex University School of Law, and The Ecumenical Council for Corporate Responsibility. Available at http://solutions-network.org/site-fpic/files/2012/09/Making-Free-Prior-Informed-Consent-a-Reality-DoyleCarino.pdf.

Echo-Hawk, Walter. 2013. *In the Light of Justice: The Rise of Human Rights in Native America & the UN Declaration of the Rights of Indigenous Peoples*. Fulcrum Publishing.

Engle, Karen. 2011. "On Fragile Architecture: The UN Declaration on the Rights of Indigenous Peoples in the context of human rights." *The European Journal of International Law* 22 (1): 141–163.

Enright, Michael. 2016. "A '100 Days' Report Card on our New Prime Minister." *The Sunday Edition*. CBC Radio, February 7. Available at http://www.cbc.ca/radio/thesundayedition/the-police-and-the-public-100-days-of-trudeau-small-green-island-robert-s-rules-of-the-piano-1.3435401/a-100-days-report-card-on-our-new-prime-minister-1.3435586.

Flanagan, Tom. 2015. "Support for a UN Declaration May Haunt Resource Sector." *Globe and Mail*, November 23.

General Assembly of the United Nations. 2014. "Draft Outcome Document to be adopted by the General Assembly on 22 September 2014: Outcome document of the High-level meeting of the General Assembly: The World Conference on indigenous peoples." General Assembly of the United Nations. Available at http://www.un.org/en/ga/69/meetings/indigenous/pdf/WCIP-Outcome-Document-Rev3.pdf.

Gooda, Mick, and Katie Kiss. 2013. *Implementation of the United Nations Declaration on the Rights of Indigenous Peoples Declaration Dialogue Series: Discussion Paper 3 – We have a Right to Participate in Decisions that Affect Us – Effective Participation, Free, Prior and Informed Consent, and Good Faith*. Australian Human Rights Commission.

Haida Nation v. British Columbia (Minister of Forests), 2004 S.C.C. 73, [2004] 3 S.C.R. 511.

Hayward, Janine, and Nicola Wheen, eds. 2004. *The Waitangi Tribunal/Te Roopu Whakamana i te Tiriti o Waitangi*. Auckland: Bridget Williams Books.

Henderson, James Youngblood (Sa'ke'j). 2008. *Indigenous Diplomacy and the Rights of Peoples: Achieving UN Recognition*. Saskatchewan: Purich Publishing.

Huffington Post Canada. Undated. "Enbridge Pipeline Protest." *Huffington Post Canada*. Available at http://www.huffingtonpost.ca/news/enbridge-pipeline-protest/.

Hupacasath First Nation v. British Columbia (Minister of Forests) et al., 2005 B.C.S.C. 1712.

Indigenous and Northern Affairs Canada. 2010. *Canada's Statement of Support on the United Nations Declaration on the Rights of Indigenous Peoples*. Government of Canada, November 12. Available at http://www.aadnc-aandc.gc.ca/eng/1309374239861/1309374546142.

Indigenous and Northern Affairs Canada. 2015. *United Nations Declaration on the Rights of Indigenous Peoples*. Government of Canada, April 13. Available at https://www.aadnc-aandc.gc.ca/eng/1309374407406/1309374458958.

International Law Association. 2012. *Resolution No. 5/2012: Rights of Indigenous Peoples. [The Sofia Resolution.]* International Law Association. Available at http://www.ila-hq.org/en/committees/index.cfm/cid/1024.

International Working Group for Indigenous Affairs. 2014. *Interpreting the UN Guiding Principles for Indigenous Peoples*. IWGIA Report 16. Copenhagen: IWGIA.

King, Hayden. 2015. "Can Trudeau Deliver on His First Nations Promises?" *CBC News*, October 23. Available at http://www.cbc.ca/news/aboriginal/can-trudeau-deliver-on-first-nations-promises-1.3284491.

Liberal Party of Canada. 2015. *A New Plan for a Strong Middle Class*. Liberal Party of Canada. Available at https://www.liberal.ca/files/2015/10/New-plan-for-a-strong-middle-class.pdf.

Lightfoot, Sheryl. 2010, "A Sea Change on the U.N. Declaration — Or Is It?" *Indian Country Today*, May 3. Available at http://indiancountrytodaymedianetwork.com/2010/05/05/sea-change-un-declaration-or-it-122871.

Lightfoot, Sheryl. 2010. "Emerging International Indigenous Rights Norms and 'Over-compliance' in New Zealand and Canada." *Political Science* (June) 62, 1: 84-104.

Long Plain First Nation v. Canada, 2012, F.C. 1474 [2012].

Louis v. British Columbia (Energy, Mines and Petroleum Resources), 2011, B.C.S.C. 1070.

MacKay, Fergus. 2004. "Indigenous Peoples' Right to Free, Prior, and Informed Consent and the World Bank's Extractive Industries Review." *Sustainable Development Law & Policy* 4 (2): 43–65. Available at http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1380&context=sdlp.

McCarthy, Shawn. 2015. "Resource Firms Endorse Call for Aboriginal Veto Rights to Projects." *Globe and Mail*, September 20. Available at http://www.theglobeandmail.com/report-on-business/industry-news/energy-and-resources/resources-firms-endorse-call-for-aboriginal-veto-rights-to-projects/article26447800/.

Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage), 2005 S.C.C. 69, [2005] 3 S.C.R. 388.

Mitchell, Terry, ed. 2014. *The Internationalization of Indigenous Rights: UNDRIP in the Canadian Context*. Special Report. Centre for International Governance Innovation [CIGI]. Available at https://www.cigionline.org/sites/default/files/indigenous_rights_special_report_web_1.pdf.

Newman, Dwight. 2014. *Revisiting the Duty to Consult Aboriginal Peoples*. Saskatchewan: Purich Publishing.

New Zealand, Ministry of Justice. Undated. *Waitangi Tribunal*. Web page. Government of New Zealand. Available at http://www.justice.govt.nz/tribunals/waitangi-tribunal.

Nijar, Gurdial Singh. 2013. "Traditional Knowledge Systems, International Law and National Challenges: Marginalization or emancipation?" *The European Journal of International Law* 24 (4): 1205–1221.

Odello, Marco. 2011. "Chapter 6: Indigenous Rights in the Constitutional State." In Marco Odello and Sofia Cavandoli (eds.). *Emerging Areas of Human Rights in the 21st Century*. London: Routledge.

Olynyk, John. 2005. *The* Haida Nation *and* Taku River Tlingit *Decisions: Clarifying Roles and Responsibilities for Aboriginal Consultation and Accommodation*. Lawson Lundell, LLP. Available at http://www.lawsonlundell.com/media/news/236_Negotiatorarticle.pdf.

O'Neil, Peter. 2012. "Questions Raised Over Whether First Nations Could Stop Enbridge Pipeline." *Vancouver Sun*, January 27. Available at http://int.piplinks.org/Stephen+Harper+.html.

O'Neil, Peter. 2013. "UN Envoy Accused of 'Publicity Stunt' Promises 'Constructive' Advice for Harper Government on Aboriginal Issues." *National Post*, October 7. Available at http://news.nationalpost.com/news/canada/un-envoy-accused-of-publicity-stunt-promises-constructive-advice-for-harper-government-on-aboriginal-issues.

O'Neil, Peter. 2014. "Rift Among First Nations Leaders Over Threat for 'Economic Shutdown' Coast-to-Coast." *National Post*, May 16. Available at http://news.nationalpost.com/news/canada/rift-among-first-nations-leaders-over-threat-for-economic-shutdown-coast-to-coast.

Ornelas, Roxanne. 2014. "Implementing the Policy of the U.N. Declaration on the Rights of Indigenous Peoples." *Indigenous Policy Journal* 5 (1), Article 4.

Penner, Derrick. 2011. "Certainty Still a Question in Land Rights and Resource Development." *Vancouver Sun*, November 12.

Rombouts, Sebastiaan Johannes. 2014. *Having a Say: Indigenous Peoples, International Law and Free, Prior and Informed Consent*. Wolf Legal Publishers.

Specific Claims Tribunal Canada. 2011. *A Brief History of Specific Claims Prior to the Passage of Bill C-30: The* Specific Claims Tribunal Act. Specific Claims Tribunal Canada. Available at http://www.sct-trp.ca/hist/hist_e.htm.

Tailfeathers, Elle-Máijá. 2010. "Actions Speak Louder than Words." *Windspeaker* 28 (8).

Taku River Tlingit First Nation v. British Columbia (Project Assessment Director), 2004 S.C.C. 74, [2004] 3 S.C.R. 550.

Thompson, Isha. 2010. "Sign on the Dotted Line." *Corporate Knights*, Spring.

Tsilhqot'in Nation v. British Columbia, 2014 S.C.C. 44, [2014] 2 S.C.R. 257.

Tzeachten First Nation v. Canada (Attorney General), 2008 F.C. 928.

United Nations. 2008. *United Nations Declaration on the Rights of Indigenous Peoples*. United Nations. Available at http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.

Ward, Tara. 2011. "The Right to Free, Prior, and Informed Consent: Indigenous Peoples' Participation Rights within International Law." *Northwestern Journal of International Human Rights* 54 (10): Abstract available at http://scholarlycommons.law.northwestern.edu/njihr/vol10/iss2/2.

Wiessner, Siegfried. 2011. "The Cultural Rights of Indigenous Peoples: Achievements and Continuing Challenges." *European Journal of International Law* 22 (1): 121-140. Available at http://ejil.org/pdfs/22/1/2128.pdf.

Xanthaki, Alexandra. 2009. "Indigenous Rights in International Law over the Last 10 Years and Future Developments." *Melbourne Journal of International Law* 10 (1): 27–37. Available at http://www.austlii.edu.au/au/journals/MelbJIL/2009/3.html.

Younglai, Rachelle, and Bertrand Marotte. 2015. "Cliffs Natural Resources Completes Costly Exit from Ontario's Ring of Fire." *Globe and Mail*, March 23. Available at http://www.theglobeandmail.com/report-on-business/industry-news/energy-and-resources/cliffs-to-exit-ontarios-ring-of-fire-with-sale-of-chromite-assets/article23576822/.

ENDNOTES

1 For a North America-wide view on this issue, see Echo-Hawk 2013.

2 The ILA (2012) asserts that:

> The 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) as a whole cannot yet be considered as a statement of existing customary international law. However it includes several key provisions which correspond to existing State obligations under customary international law.
>
> The provisions included in UNDRIP which do not yet correspond to customary international law nevertheless express the aspirations of the world's indigenous peoples, as well as of States, in their move to improve existing standards for the safeguarding of indigenous peoples' human rights. States recognised them in a "declaration" subsumed "within the framework of the obligations established by the Charter of the United Nations to promote and protect human rights on a non-discriminatory basis" and passed with overwhelming support by the United Nations General Assembly. This genesis leads to an expectation of maximum compliance by States and the other relevant actors. The provisions included in UNDRIP represent the parameters of reference for States to define the scope and content of their existing obligations – pursuant to customary and conventional international law – towards indigenous peoples.
>
> States must comply with the obligation – consistently with customary and applicable conventional international law – to recognise, respect, protect, fulfil and promote the right of indigenous peoples to self-determination, conceived as the right to decide their political status and to determine what their future will be, in compliance with relevant rules of international law and the principles of equity and non-discrimination.

3 The statement declared:

> However, there is a strong evidence that FPIC, if understood as a mere compliance mechanism, may easily mutate into a simple box-ticking exercise, failing to prevent human rights harm from occurring. FPIC must therefore be understood and practiced as just one expression of a rights-based relationships between indigenous peoples, states and businesses, predicated on the full recognition of the whole set of rights laid out in the UNDRIP, with emphasis on the rights to participation, consultation and consent. Furthermore, FPIC must be regarded as a process of sincere long-term trust and relationship building, leading to a real mutual commitment, which may need renewal at various stages of a project and which implies that enterprises take responsibility for the impact of their operations on future generations of the affected indigenous communities. (International Working Group for Indigenous Affairs 2014, 44)

4 For an extended and detailed commentary on FPIC, see Doyle 2014. See also Rombouts 2014.

5 For an interesting overview of free, prior, and informed consent in Canada, see Boreal Leadership Council 2012. The Boreal Leadership Council is a consortium of interested parties including Indigenous peoples, industry, and environmentalists.

6 For a strong argument in favour of Canada using UNDRIP as the basis for a development strategy, see Ornelas 2014.

7 The work of the Waitangi Tribunal can be examined here: http://www.justice.govt.nz/tribunals/waitangi-tribunal. See also Hayward and Wheen, eds. 2004.

8 For further information, see Specific Claims Tribunal Canada 2011.

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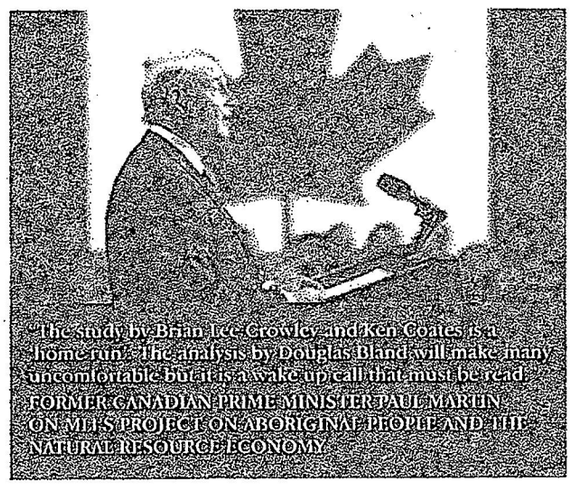

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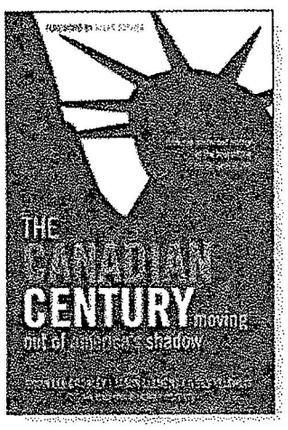

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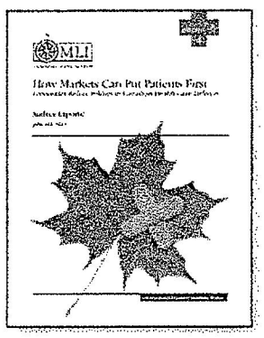

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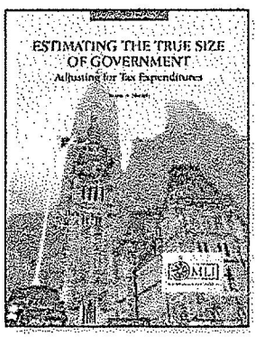

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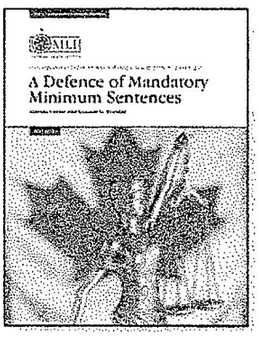

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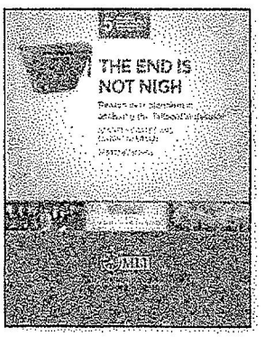

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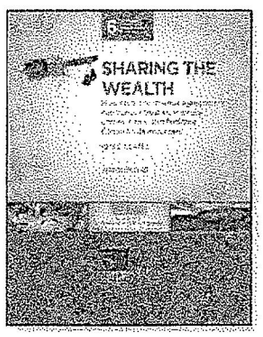

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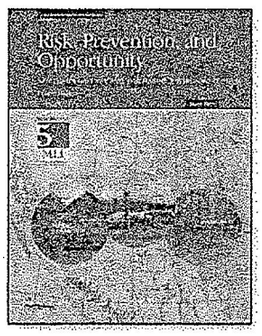

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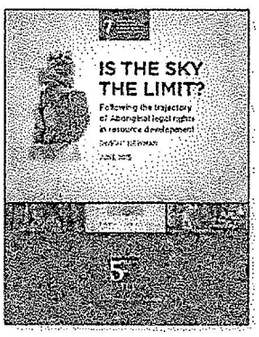

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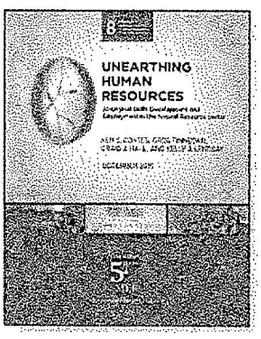
Dwight Newman



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What people are saying about the Macdonald-Laurier Institute

In five short years, the institute has established itself as a steady source of high-quality research and thoughtful policy analysis here in our nation's capital. Inspired by Canada's deep-rooted intellectual tradition of ordered liberty – as exemplified by Macdonald and Laurier – the institute is making unique contributions to federal public policy and discourse. Please accept my best wishes for a memorable anniversary celebration and continued success.

THE RIGHT HONOURABLE STEPHEN HARPER

The Macdonald-Laurier Institute is an important source of fact and opinion for so many, including me. Everything they tackle is accomplished in great depth and furthers the public policy debate in Canada. Happy Anniversary, this is but the beginning.

THE RIGHT HONOURABLE PAUL MARTIN

In its mere five years of existence, the Macdonald-Laurier Institute, under the erudite Brian Lee Crowley's vibrant leadership, has, through its various publications and public events, forged a reputation for brilliance and originality in areas of vital concern to Canadians: from all aspects of the economy to health care reform, aboriginal affairs, justice, and national security.

BARBARA KAY, NATIONAL POST COLUMNIST

Intelligent and informed debate contributes to a stronger, healthier and more competitive Canadian society. In five short years the Macdonald-Laurier Institute has emerged as a significant and respected voice in the shaping of public policy. On a wide range of issues important to our country's future, Brian Lee Crowley and his team are making a difference.

JOHN MANLEY, CEO COUNCIL

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Subject / Sujet: 100006-1
Meeting - Indigenous Affairs

Due Date / Date d'échéance: 2016-06-16

Sector's Due Date / Date d'échéance du secteur:

Assigned To / Assigné à: CS-MS-MLU
Julie Gauthier

Assigned Date / Assigné le: 2016-05-18

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Julie Gauthier

Ministerial Correspondence Unit - Justice Canada

100006-1

From: Wilson-Raybould, Jody - M.P. <Jody.Wilson-Raybould@parl.gc.ca>
Sent: 2016-May-16 9:24 AM
To: Ministerial Correspondence Unit - Justice Canada; MacKenzie, Lea
Subject: FW: I Love Attawapiskat : a campaign in support of First Nations children and youth

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From: [redacted]
Sent: May 15, 2016 9:25 PM
To: Wilson-Raybould, Jody - M.P.
Subject: FW: I Love Attawapiskat : a campaign in support of First Nations children and youth

To the Honourable Jody Wilson-Raybould, and the office of Justice Canada,

Greetings,

-no record in MCU

Since sending the email below to your office two weeks ago, the *I Love Attawapiskat* campaign has gained much momentum, attracting the interest of the Mayor of Ottawa, the Office of the Prime Minister, an airline, major corporate sponsors and a top media company. All of these partners will be confirmed officially this week, at which point we will also set the date for a press launch — which we are hoping will take place on May 31st.

We would like to know how Justice Canada can support this initiative. Would the Honourable Wilson-Raybould be willing to speak at the press conference or make a statement? Would it be possible for us to meet with your office in the coming days?

We thank you for considering this request and extend our warmest regards,

[redacted]

s.19(1)

From: [redacted]
Date: Sunday, May 1, 2016 at 8:40 PM
To: <jody.wilson-raybould@parl.gc.ca>
Subject: I Love Attawapiskat : a campaign in support of First Nations children and youth

To the Honourable Jody Wilson-Raybould, and the office of Justice Canada,

Greetings,

[redacted] I Love First Peoples, a non-indigenous citizen's movement in support of First Nations youth and a Canadian registered non-profit organization.

I have heard your recent statements regarding reconciliation and, as a concerned citizen, am deeply encouraged that our government is taking such a strong stance in favour of changing the plight of Aboriginal peoples in Canada. Our non-indigeneous group actively works to create a bridge that will see the current walls of prejudice and misinformation broken down. WE WANT TO HELP, and we know we have the capacity to make a real difference with Canadians.

In 2014, we launched a project called I Love First Nations, to help break the cycle of poverty in the lives of First Nations children through education and the motivation to stay in school. We partnered with Katiganik Elementary School in Rapid Lake, Québec, which is considered the most disadvantaged community in our province. Within two short years, the school noted an astounding 30% increase in child enrolment. We have achieved this by creating a bridge between the community and the citizens of the city where we are based, Gatineau. Each year, we invite citizens to fill shoeboxes with gifts of all kinds for children. At the beginning of the school year, we hold a back to school celebration in Rapid Lake, where each child receives a gift-filled shoebox. Then, during the school year, we hold smaller events and shoeboxes are awarded to the children who achieve milestones in learning. Finally, at the end of the year, the children are given the opportunity to showcase their best achievements during a year-end celebration. This project has inspired hope and a new excitement for learning in the hearts of the children. For more information on this project, please visit www.iloyefirstnations.ca. I have also attached a PowerPoint presentation that further describes our activities.

Since the news of the recent suicides Attawapiskat, our team has been completely heartbroken, and considering ways by which we can help. We cannot possibly dare to call ourselves "I Love First Peoples" and sit back while the crisis unfolds.

We are writing to let you know that we wish to launch *I Love Attawapiskat,* a major initiative that will begin in our nation's capital region, with the hope and expectation that this will create a ripple effect across Canada, raising awareness and support for Attawapiskat and other FN communities facing similar hardships. We have reached out the the chiefs of the Nishnawbe Aski Nation, and expect to speak with them this week.

Our organization is still quite young, but we have a proven track record with FN children and youth, and the community in Rapid Lake. Furthermore, our team holds a wealth of experience in organizing large events and rallies and in setting up successful media campaigns. I personally have organized major festivals in Gatineau. Our director of national development, Iain Speirs, has done the same, and personally brought Mother Theresa to Canada in 1988 and organized an event that saw more than 35,000 people in attendance.

We would like to know how our government can partner with us to make this initiative a success.

Would it be possible for us to meet with your office in the coming days?

On behalf of our entire team, I thank you for your prompt attention and consideration, as we eagerly await your response.

Best regards,

[redacted]

s.19(1)

Pentney, William

From: Gauthier, Melanie on behalf of Saranchuk, Andrew
Sent: June-24-16 3:31 PM
To: * Executive Committee Members
Cc: * Executive Committee Members Assistants; Trombetti, Oriana; * BRLP ADMO Lawyers
Subject: Department of Justice Transfer Payment Guide / Guide sur les paiements de transferts du ministère de la Justice
Attachments: ADM Memo - Second Edition of Transfer Payment Guide 2 0 (final-June 22).docx; English TP Guide (JUN 09).docx; French TP Guide (JUN 09).docx

MESSAGE FROM THE ASSISTANT DEPUTY MINISTER
BUSINESS AND REGULATORY LAW PORTFOLIO

FOR DISTRIBUTION

Colleagues:

Please find attached information regarding the second edition of the Department of Justice Guide on Transfer Payments. Please ensure that this information is widely distributed so that legal counsel are aware of this updated reference material.

This message and these documents have been posted to the BRLP SharePoint site at: http://nationalteams/sites/brlp-pdadr/SitePages/Home.aspx.

Thank you.

Andrew Saranchuk

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MESSAGE DU SOUS-MINISTRE ADJOINT
PORTEFEUILLE DU DROIT DES AFFAIRES ET DU DROIT RÉGLEMENTAIRE

POUR DISTRIBUTION

Collègues,

Veuillez trouver ci-joint de l'information au sujet de la seconde édition du Guide de référence sur les paiements de transfert du ministère de la Justice. Veuillez-vous assurer que cette information est diffusée dans l'ensemble du Ministère afin que les conseillers juridiques soient au courant de la mise à jour de ce document de référence.

Ce message et la documentation ont été affichés sur le site SharePoint du PDADR: http://nationalteams/sites/brlp-pdadr/SitePages/Home.aspx

Merci.

Andrew Saranchuk

Department of Justice Canada | Ministère de la Justice Canada

Security classification -- Côte de sécurité
File number -- Numéro de dossier
Date June 24, 2016 / le 24 juin, 2016
Telephone/FAX -- Téléphone/Télécopieur (613) 941-8381 / (613) 946-9988

MEMORANDUM / NOTE DE SERVICE

Assitant Deputy Minister
Business and Regulatory
Law Portfolio
Department of Justice
Ottawa, Ontario K1A 0H8
Facsimile: 613-946-9988

Sous-ministre adjoint,
Portefeuille du droit des
affaires et du droit réglementaire
Ministère de la Justice
Ottawa (Ontario) K1A 0H8
Télécopieur : 613-946-9988

TO / DEST: Executive Committee Members / Membres du Comité exécutif s.23

FROM / ORIG: Andrew Saranchuk, Assistant Deputy Minister, BRLP/ Sous-ministre adjoint, PDADR

SUBJECT / OBJET: **DEPARTMENT OF JUSTICE TRANSFER PAYMENT GUIDE / GUIDE SUR LES PAIEMENTS DE TRANSFERTS DU MINISTÈRE DE LA JUSTICE**

Comments/Remarques

[redacted]

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Pages 183 to / à 400
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23

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Reynolds, Craig

From: Hough, Maegan
Sent: July 5, 2016 4:01 PM
To: Bostwick, Edith
Cc: Arthurs, Cynthia; Clark, Caroline
Subject: IOC N2N event write-up

Edith,

Thank you for the opportunity to attend this event. Rushed as I was to get there, I learned a lot about the current First Nations fiscal institutions and some communities' approach to fiscal management. Each speaker was posed a question by the moderator which framed each presentation. Here is a (not so brief) summary of the proceedings:

Harold Calla, Executive Chair, First Nations Financial Management Board was asked to "provide an overview of the First Nations Financial management Act as it has been successfully implemented across the country"

Mr. Calla described the problem with the inability to raise capital on reserve lands, particularly from his experience in BC (Shushwap) and how the Act was "the fix", providing a clear framework and standards that met the requirements of the markets allowing First Nations to be a "credible risk" for lenders. The Board is modelled on the equivalent municipal authority essentially acting as the gatekeeper to the "borrowing pool" of First Nations. There are currently 180 First Nations scheduled to the act – that number will soon be over 200. The success of the model is that not only the "rich urban bands" but all bands across the country can use this tool to access capital.

Regarding N2N he quoted Albert Einstein "a Nation can't solve the problems using the same thinking that created the problem". Translation: there needs to be a clear understanding that the framework we have is not working before we can solve any problems. There must be systemic change. First Nations also can't wait for government to fix things – the solutions must be generated from the communities. Regarding the bureaucracy, he hoped that it would be empowered to attempt solutions. He noted that First Nations were "frozen in time" at contact by having been stripped of their institutions including trading structures and the current challenge is that they can't make up all those years of evolution overnight, which is what is seemingly expected of them. Communities must be provided the investment to build that capacity and work towards the re-emergence of Nationhood. Principles from the UNDRIP and the TRC recommendations can be applied in that process. Legislation also needs to reflect this transition, making optional legislation a worthy model.

His question to the group: If we are looking at Reconciliation – what elements of the machinery of government is the Canadian State willing to make available to First Nations and on what basis? This discussion should include participation in mainstream business and markets. He believes fiscal management will be a cornerstone of a strong relationship. Canada's economic future is based on energy which is now dependent upon First Nation cooperation – and First Nations want to participate and receive a share of the benefits which will help bridge the gaps. For him, environmental assessment processes are more important than profits in the sense of participation in the decision-making process. The Squamish EA process was used as an example where all permits were eventually granted but done under their leadership.

He closed with another Einstein quote: Logic will get you from A to B but imagination will get you where you are going.

Ernie Daniels, President/CEO, First Nations Finance Authority was asked to "provide information on First Nations' access to capital markets and some success stories"

Mr. Daniels had a great power point that I hope will eventually be made available that described how the authority operates including how First Nations signed-on and had their resources pooled to create a high quality investment for markets. They have an A3 rating with Moodys and the equivalent with Standards and Poor. The foundations are that it

is %100 owned by First Nations as a non-profit. It developed in BC but has spread across the country and includes Nations of all sizes and with all types of revenue sources including Own Source and other transfers. So far they have lent 260 million to 31 First Nations for projects ranging from schools to housing to wellness centres to resource developments to administration buildings, to additional lands added to reserves. He pointed to this variety of projects as evidence that First Nations are not squandering their resources but are trying to bridge the gaps in wellness and infrastructure that have been left to fester.

If I understood correctly there were five points of strength in their set-up:

1) Financial management Board Certification requirements for membership
2) Following standards set by capital markets
3) FNFA reserve fund (substantial)
4) Borrowing members approve other members loan requests (a sort of peer-review), and
5) Trust accounting system ensures loan repayment (money is taken at revenue source to repay loan First, then excess provided to FN within 48 hours)

Their website is set up to be user-friendly for First Nations: fnfn.ca.

Manny Jules, Chief Commissioner, First Nations Taxation Commission was asked "what other fundamental changes in government do you think we need to achieve N@N?"

Mr. Jules made several reference to legal principles that were slightly misstated (ie that the Indian act created fiduciary duties to all bands broadly). He also spoke about the doctrine of discovery being imposed long after relationships were established on the ground and about some of the contrasts he saw between the current state of affairs with the Maori in New Zealand and certain American Indian Tribes as far as their presence goes in society. His main thesis was that the essential building blocks to governance are title certainty and tax jurisdiction. He is of the belief that the land vests in the "Nation" not the band and that internal divisions between either bands or subgroups of a Nation are ok; the subgroups should focus on those things they all agree on instead of attempting to be a Nation with one voice. He firmly believes that tax jurisdiction is necessary for Nationhood and that First Nations need to decide if they want to be corporations or governments – if the latter, they must have the ability to tax and raise revenues to support their objectives. And in order to tax, you need certainty of title. He fears that AFN is still not ready to have that conversation with government. He also alluded to the constitutional negotiations and how if the AFN had been trusted and had been seen as organized and trustworthy in 1981/82 there would be First Nations jurisdiction in the Constitution. He eloquently spoke about how "the institutions we create will outlive us" and so they should be forward looking and imaginative. He also advocated for a First Nation Institute of infrastructure that (if I understood correctly) would either shoulder some of the institutional administrative burdens for smaller Nations or would at least provide a helping hand. He looks forward to a point where Nations are interdependent (ie help and support each other as well as trade) in a positive way.

A few themes emerged from these three presentations:

- "If it ain't broke, don't fix it" – all three were quite adamant that these structures work well and should be left alone to develop and grow and not tinkered with endlessly.

- "the optional basis" or "if you built it, they will come" – there was a lot of praise for various optional legislative schemes that allowed First Nations to either pick the fiscal regime that worked best for them or for individual First Nations to sign on gradually as they developed the capacity and the interest in doing so. Comparison with other First Nations would play a positive role here by providing a workable example for others to follow.

- "(separate but) equal" – a real drive for First Nations to have the same level of housing, schools, infrastructure, etc but built from and by the communities as opposed to imposed or integrated with other local structures. It wasn't something that was said but it was the reality of the structures they were supporting.

- "The Federal Family" – in contrast (sort of) to the above, there was a clear support for the Canadian state as a "federal family" but with a clear jurisdiction carved out for First Nations, and a caution that until that time section 91(24) should be preserved and used as an umbrella not so much from a Crown relationship perspective but from a strictly practical 'let's avoid having twenty seven different regimes that all have their own underlying costs' perspective.

- "Market-based environment" – There was a certain element of having "drunk the cool aid" in the sense that there was absolute confidence that the open market was the place to obtain capital to support communities. Contrast this with those who "feel the Bern" in the States and even a good chunk of Canadian political discourse.

- "We are not all treaty people" – this was raised rather late in the session but I think it captures a lot of the background to these institutions in that many of them came out of advocacy from BC where there were no treaties with promises to fight over. Some audience members felt that instead of building all these structures FNs should look to governments to fulfill treaty promises and obtain infrastructure (either the thing itself or the money to build it). The speakers and a few other audience members asked these dissenters to trust them, to see them as all family, and to understand that there are multiple ways of achieving the goals and going forward with one does not mean the other has less meaning or won't also come to pass.

- "The land lottery" – There were a couple comments during the presentations and also a couple of questions about how to address the disparity between First Nations who lived on resource rich land (either in natural resources, or access to other markets, etc) and those who did not. Attawapiskat v Squamish. Consensus was that there would have to be some type of equalization amongst First Nations and also that this dialogue of "we can't have one First Nation doing better than another, or a First Nation doing better than the nearby town" was bunk. No one wanted to see themselves benefit to the detriment of others and the idea that one First Nation, within a new framework, would let another fall down was wrongheaded. But at the moment there are not institutions available to make those wealth transfers.

Finally, the **IOC president** spoke [redacted] She did, however, attempt to articulate some characteristics of a N2N relationship: Respect, Trust, and also Fiscal arrangements – not in the form of grants and contributions or even block funding but in the form of governance institutions working together.

s.19(1)

I have some more detailed notes and am happy to discuss the event with you further.

M

~ Maegan Hough ~
Counsel | Avocate
Aboriginal Law Centre | Centre de Droit autochtone
Department of Justice Canada | Ministère de la Justice du Canada
275 Sparks Street, Room 7100, Ottawa ON K1A 0H8 | 275, rue Sparks, pièce 7100, Ottawa ON K1A 0H8
maegan.hough@justice.gc.ca
Telephone | Téléphone 613-907-3733
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Pentney, William

From: Pentney, William
Sent: July-29-16 4:00 PM
To: Hudson, Michael; Legault, Pierre
Cc: Leclerc, Caroline; Taschereau, Alexia; Saville, Suesan
Subject: [redacted] s.23

Michael: [redacted]

[redacted]

William F. Pentney, Q.C., c.r.
Deputy Minister of Justice and Deputy Attorney General of Canada
Sous-ministre de la Justice et sous-procureur général du Canada
Justice Canada